

A GENERAL
TREATISE ON STATUTES:
THEIR
Fb. 8
RULES OF CONSTRUCTION,
AND THE
PROPER BOUNDARIES OF LEGISLATION AND OF
JUDICIAL INTERPRETATION.

INCLUDING
A SUMMARY OF THE PRACTICE OF PARLIAMENT,
AND THE ANCIENT AND MODERN
METHOD OF PROCEEDING IN PASSING BILLS OF EVERY KIND.

Part the First: Constitutional and Parliamentary.

SECOND EDITION.

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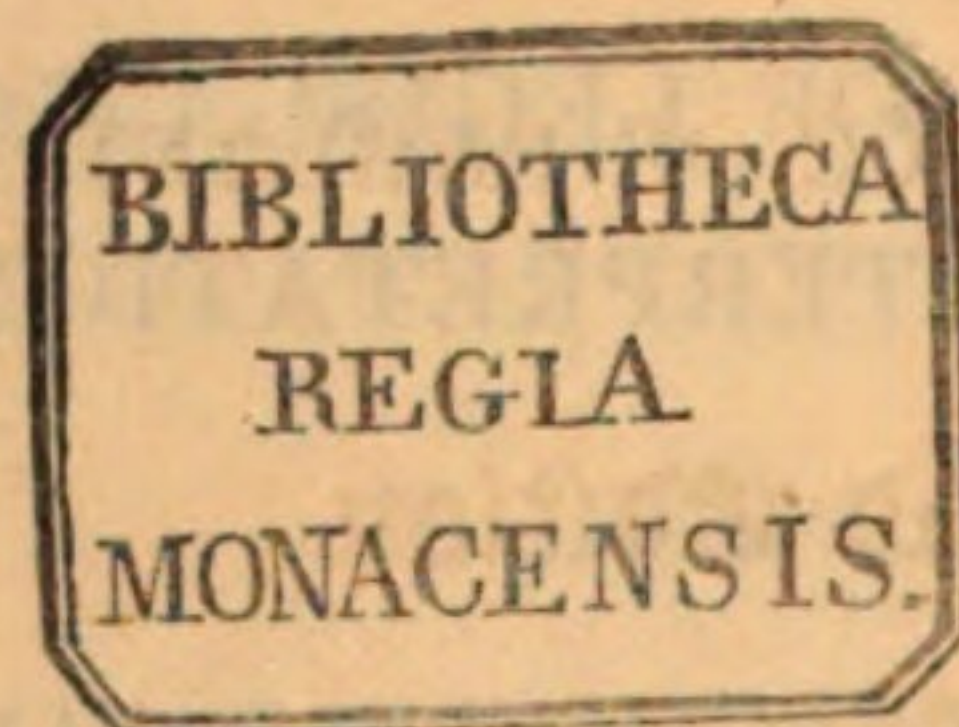
BARRISTER-AT-LAW.

"Optima est lex quæ minimum relinquit arbitrio judicis, optimus judex qui minimum sibi."—Aphorism, 46, Bacon's Works, vol. vii. p. 148.

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TO
THE RIGHT HONORABLE
THOMAS LORD DENMAN,
LORD CHIEF JUSTICE OF ENGLAND,

This Second Edition
OF A GENERAL TREATISE ON STATUTES,
THEIR RULES OF CONSTRUCTION,

AND THE
PROPER BOUNDARIES OF LEGISLATION AND OF JUDICIAL
INTERPRETATION,

INCLUDING
A SUMMARY OF THE "LEX ET CONSUETUDO PARLIAMENTI,"
THE "MODUS TENENDI PARLIAMENTUM," AND THE
"MODUS CONDENDI LEGES:"
IS MOST FAITHFULLY INSCRIBED;

BY A CLOSE AND FAMILIAR OBSERVER
OF HIS LORDSHIP'S HIGH CONSTITUTIONAL PRINCIPLES,
AND INFLEXIBLE JUDICIAL INTEGRITY,
DURING A PERIOD OF UPWARDS OF THIRTY YEARS.

PREFACE.

A NEW Edition of this Treatise having been called for, the Author's anxious endeavours have been used, to render it less undeserving of the kind indulgence with which the work has been already received, by the public and the profession.

In the present impression, the constitutional matter will be found to have been considerably amplified. The constituent parts of a Parliament, the true nature of the kingly office ; the vocation of the Lords, and the mission of the Commons, have, all, been more fully investigated. In tracing the origin and extension of the royal prerogative, it is believed to have been shown, that the term "our gracious Monarch" has been applied to Kings of England, with as little propriety, as if the title had been used of Celestial Emperor or Autocratic Czar.

At the period of the publication of the First Edition of this Treatise, no modern work had appeared, relating to the Practice and Proceedings of Parliament ; and the subject was therefore considered in this Treatise, incidentally. Since that

time, the very careful and accurate publication of Mr. May, has treated of all Parliamentary proceedings, in so satisfactory a manner, as to render it advisable rather to contract, than to enlarge, that branch of the inquiry. But, so far as the subject is necessarily embraced in the Summary contained in this work, the Author has accepted Mr. May, as his general guide, posterior to Hatsell; has made of his excellent practical work the freest use, and desires to render, for it, the fullest acknowledgments.

The interesting "Lives of the Chancellors, by Lord Campbell," has been frequently referred to, in the progress of the work. The opinions of the noble and learned historian, will be found to be often canvassed with great freedom; but, at the same time, with the respect justly due, to the station, ability and learning of the noble Lord.

A scarce treatise on Acts of Parliament and their Exposition—by Sir Christopher Hatton, Lord Chancellor of England in the reign of Queen Elizabeth; had not been consulted by the Author, before the first appearance of this work, but has since been perused by him. Of this Tract, Lord Campbell (*a*) says: "To give the public, a notion that he had attended to the study of the law, Hatton actually published a Treatise concerning Acts of Parliament and the Exposition thereof; but it was well known to be written by another; and was withal, a very poor production." Upon which passage, Sir Harris

(*a*) Lives of the Chancellors, vol. 2, p. 158.

Nicholas observes: "The work thus said to have
"been actually published by Hatton, with so un-
"worthy an object, was not printed, until he
"had quietly reposed in his grave, for eighty-six
"years" (*a*). Indeed it is observable that the very
title page speaks of it, as written by the *late* Lord
Chancellor of England. But Sir Harris Nicholas
proceeds: "Barrington, who appears really to have
"seen the book, says; it must be allowed not to
"be entirely destitute of merit."

"Who shall decide, where Jurists disagree?"

In the judgment of the Author of this Treatise,
the work in question, certainly is not an elaborate
production, or one displaying great extent of
information, acute penetration, or much depth of
thought; but, at the same time, it appears to be
more wanting in fulness than in precision; and so
far, to be very unlike the "Magnum Opus" of the
noble and learned historian.

Another work referred to by Lord Campbell, it
would have been incumbent upon the Author to
have consulted, if its existence could have been
ascertained, with any degree of certainty. In the
Life of Lord Ellesmere, that influential Lord
Chancellor is stated to have published a work
upon the "Privileges of Parliament" (*b*), and it
was to be expected, that such a production, from so

(*a*) Life of Sir Christopher Hatton, p. 468.

(*b*) Lives of the Chancellors (Lord Ellesmere) vol. 2, p. 264.

powerful a quarter, would soon be cited as an irrefragable authority. But, often as the question of privilege is forced upon the attention of the reader in the "Lives of the Chancellors," Lord Ellesmere's authority is nowhere relied upon; and why? Because, there is every reason to believe, that no such work exists.

In the Library of the Middle Temple, is found a "Treatise upon the Privilege and Prerogatives of the High Court of Chancery, 1641;" written, avowedly, by Lord Ellesmere, and bearing internal evidence of having been composed by the Lord Chancellor during his angry controversy with the Lord Chief Justice; principally designed, and most ably constructed, to assert and maintain the jurisdiction and powers of the Court of Chancery.

In the same volume of Tracts in the Middle Temple Library, No. 7, is a Treatise entitled, "The Privileges and Practice of Parliaments in England," printed in 1628. This Tract does not profess to be written by Lord Ellesmere, or any other person high in office, but only to be "carefully collected; and to be scene (a), and allowed by the learned in the laws." It is a respectable compilation, chiefly taken from Hakewill, and partly from Lord Ellesmere's published judgment in the case of the *Post Nati*.

In the Library of the Inner Temple, is found a Tract entitled, "Office of the Lord Chancellor,"

(a) *Sic* in Title page.

published in 1651, which is said in the Title page, to have been composed by Lord Ellesmere; but, in the body of the work, it is avowed that “the materials were collected, not for the instruction of his Honor, (who needs none, of any kind); but to provoke some sound matters from those learned lawyers and skilful antiquaries that are in attendance upon his Lordship;” and that the work was, indeed, “prepared in obedience to his commands.”

The result seems to be, that the two works before mentioned, the laboured Judgment in the case of the *Post Nati*, and the Treatise upon the Privileges and Prerogatives of the High Court of Chancery, are undoubted and acknowledged works of Lord Ellesmere; but there is no reason to believe that any such work of Lord Ellesmere, as mentioned by Lord Campbell, on the Privileges of Parliament, was ever composed or published.

Another work, alluded to by Lord Campbell (*a*), but without any reference, is very closely connected with a material part of the present Inquiry, viz., Chapter 31, of Lord Nottingham’s *Prolegomena* of Equity. “*L’ou les juges del Comun Ley ont*” agreed “to alter it, *sans acte de Parlement, et l’on nemy*.” The endeavours of the Author to procure an inspection of this Manuscript, in his researches in the various Law Libraries, and particularly in Lincoln’s Inn, rich in MSS., have not been attended with

(*a*) Life of Lord Nottingham—Life of the Chancellors, vol. 3, p. 396.

success; which is the more regretted, as Hargrave speaks of the work as highly interesting (*a*).

The course of proceeding under the latest act for the trial of Controverted Elections; and the amended Rules and Orders of both Houses, of July 1847, regulating the passing of Railway and of all other Private Bills, are contained in the Parliamentary portion of the work.

The rules and cases on the construction of Statutes, have been greatly enlarged and extended; and the Synopsis of the alterations in the law effected by Statute, fully completed, from William the Conqueror down to Stat. 10 & 11 Victoria, Session 1847.

(*a*) In his Preface to Hale's Jurisdiction of the Lords, pp. clii. cliii.

Temple,

October 24, 1847.

P R E F A C E

TO PART THE FIRST.—FIRST EDITION.

IN discharging the debt which Lord Bacon has said “every man owes to his profession,” it is desirable to bear in mind the accompanying observation of the same great master, that this is best performed (after the honest and liberal practice of the Profession,) if a man be able, “to visit and “strengthen the roots of the science itself.” Accordingly, it will be the care of the inquisitive lawyer, to select an interesting subject of professional inquiry; ennobled by its connection with the antiquities, the history, and the constitution, of his country. In the handling of such topics, he will be always solicitous to trace out the *legum leges*, to ascertain whether the institutions he has undertaken to expound, depend upon positive enactment, or have their foundation in sound and rational principles, conformable to the maxims of universal jurisprudence.

The subject of the following Treatise, the origin and history of the Statute Law of England, one

branch of our national jurisprudence, the method of making laws, and the rules for their interpretation, will be allowed to be one of great use and dignity. To this is added a summary of the practice of Parliament, the forms and proceedings of each assembly separately considered, and the various ceremonies used between the respective branches of the Legislature.

The inquiry naturally, and as it appears to the Author commodiously, divides itself into two parts; the one, Parliamentary—the other, Legal; of which the separation is easy, while the connexion will remain unbroken.

The first part of the work embraces the early history of statutes, the present practice of Parliament, and the modern method of proceeding in passing bills of every kind: the *modus tenendi Parliamentum*, with the *modus condendi leges*. Under these heads, are (it is hoped not unappropriately) introduced, many of the sessional forms, much of the regular routine of business, and somewhat of the peculiar law and custom of Parliament, and these subjects are endeavoured to be rendered familiar and clear, so as to assist the constitutional student, and (forming a manual of Parliamentary practice in ordinary cases) to put young members at once in possession of the forms of the House.

The regulations affecting private bills, which are constantly undergoing new and extensive changes and modifications by successive orders, have been

attentively considered, and are brought down to the latest possible period.

As the information to be derived from books upon practical subjects, is always very imperfect, and a knowledge of the law and usage of Parliament, which regulates the proceedings in both Houses, can scarcely be attained without actual experience, (and indeed upon points of order, none but the most practised members are ever found to deliver an opinion;) the Author is fully aware that the execution of this part of his plan will stand in need of great indulgence. He submits it, therefore, with diffidence to the candour of those, who, from their familiarity with the subject, are best acquainted with the difficulties which attend it.

The examination of Acts of Parliament in a regular analytical course, the consideration of their rules of construction, and the proper boundaries of legislation and of judicial interpretation, will form the subject of the remaining portion of the work.

One further observation is required by the nature of the present undertaking. A *readable* book upon such subjects, is not often practical; a practical work is very seldom readable:

“ Omne tulit punctum, qui miscuit utile, dulci.”

To produce both is here attempted: with what success accomplished, it is for the reader to determine.

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END OF PART THE SECOND.

ADVERTISEMENT

OF

ERRATA ET ADDENDA.

It will always inevitably happen, upon a revision of what has been written, where a fruitful subject has been treated, and a comprehensive history reduced into a small compass, that there will be found opinions to be qualified,—errors to be corrected—and deficiencies to be supplied; leaving, no doubt, many other mistakes and omissions, undetected. On those passages calling for explanation, which have not escaped his notice, the Author feels it incumbent upon him to offer the following emendations and suppletory remarks; which he submits to the judgment and candour of the readers.

Page 3, *in nota* ; For *les* read *lex*. And let not the warmest admirers of Hale, (among whom the author would be sorry not to be included); take umbrage at the expression legal pedantry. To call an act of Parliament a “tripartite indenture between the King, Lords and Commons,” surely *is* legal pedantry; though written by one of the most excellent of men and upright of judges.

Page 7, line 8, for *odinarium* read *ordinarium*.

Page 8: five lines from the bottom, for *Asisæ*, read *Assisæ*.

Page 11, line 15, for *ordiniarium*, read *ordinarium*.

Page 15, line 7, The text says, Lord Clarendon, *pace tanti viri*, is inaccurate in saying, &c. As regards Lord

Clarendon, *sit indictum*. Lord Clarendon, it is found on reference to his history, does not say, that “the assembling
“of the peers, was a new invention not before heard of, *or*
“so old, that it had not been practised in England, for
“some hundreds of years;” though Lord Campbell, quoting in all probability from memory, supposes it. The passage in Clarendon runs thus: “Never before heard of, *that is*,
“for hundreds of years, &c. ;” using in place of the disjunctive, “or,” the inuendo, “that is,” which makes his statement accurate in substance, though loosely expressed.

The high station and acknowledged learning of Lord Campbell—his kindly nature, and familiar *facetiæ*,—give a weight, and a popularity, to his statements, which make it important to point out his occasional mistakes. That the *magnum consilium* under our early kings, was often composed of the king and barons only, see the preceding pages *passim*. It would be idle and mere trifling, to enumerate ancient examples of such assemblies, at a period when the king and his council of prelates, counts and barons, alone were heard of:—“*Dominus Rex ad instantiam MAGNATUM*
“*regni sui præcepit* ;” was the style used.

Consilium, it may be fit to observe, is spelled, in this work, with an *s*, because it is constantly met with so spelled in the old books; and the *usus* seems to have settled the *jus et norma loquendi*; though if it were *res integra*, (in judicial phrase), a different course would be adopted, in lieu of what certainly appears, an unclassical and vicious mode of expression.

Page 20, *in nota*, for *ratione tenure*, read *tenuræ*.

Page 21, *in nota*, for *c'est des Germans*, read *c'est des Germains*.

Page 23. The Heptarchy, so called, but which it is said, “was really a *Bretwaldaship*.” Upon this subject, it should be stated that Hallam opposed to Sharon Turner, Sir F. Palgrave, Dr. Lingard, and Dr. Lappenberg,—in two valuable papers lately read before the Royal Antiquarian Society, sternly repudiates, what he calls “the pompous fiction of “*Bretwaldaship* ;” and traces the whole false conception to

one unsupported and unsatisfactory passage in the venerable Bede: "*Britanniorum rex potens potestate.*" But to comprehend aright German principles, German notions, and German habitudes, should we not resort to German inquirers? Dr. Lappenberg says: "The Saxonizing of Britain by the German *heretogas* or earldormen, is as manifest as the Romanizing of Spanish America by Columbus or Pizarro. (Vol. 1, p. 124). "In no country are the old German institutions, both political and legal, to be so easily traced, as in England." (Vol. 2, p. 327). "Of the Jutes and Danes, we know that they, for several centuries, lived under a great number of kings, but that they acknowledged the supremacy of the kings of Leire: in like manner as the Swedish kings were subordinate to those of Upsala. The Germans in Britain must soon have found an alliance among their tribes, indispensable. A common warfare of several states without a dictator, was not to be conceived; and the call to that post was on the most powerful, or on him whose territory was most exposed to hostile inroads. It is to be inferred that, in the spirit of Germanic forms of Government, the appointment was the result of a preceding free election. The elective Emperor of Germany, whose dignity was not attached to hereditary states, nor to descent, but to the importance of the individual, represents what the Bretwalda might have been, &c." (Vol. 1, p. 126). At the same time one observation made by Mr. Hallam is entitled to great weight: "An union in a common confederacy, could not have existed so long as they did not worship at the same altar."

Page 23, nine lines from the top, for *Anglorum-Saxorum* read *Anglorum-Saxonum*.

Page 28, line 8, for *recite*, read *recites*.

Page 32, *in nota*. For *some* petitions, read *many*; and for *were* in the Chapter House, read *are*. The kindness of Sir F. Palgrave enables me to make a further correction of this note. He is so obliging as to inform me,

that "the series is tolerably regular; and where it is interrupted;—the interruption arises from the loss of the covers of the bundles upon which the dates were written."

Page 34, five lines from the bottom, *in nota*, for declares, read declare.

Page 35, *in nota*. If the Author have refrained from denouncing the duplicity of Charles 1, in respect of the Petition of Right,—the want of the *tuta fides*,—the besetting sin of that mistaken prince, and which led to his unhappy end; it is, because the writer's business in these passages, is only with the King's accomplices, the judges; and not with the principal delinquent. The Author would not have assailed the instruments and spared the highest offender, had *he* been encountered "*on the writer's way*."

Page 43. The people controlled the succession to the Crown. This must be taken in conjunction with the doctrine in *page* 44, that the Anglo-Saxon Cyning was elected by the people out of a certain *caste*; or it will not be strictly correct. It is observed by my very learned friend Sir F. Palgrave, that "the succession was (except in revolutionary times), certain in the race, though uncertain in the person."

Page 45, twelve lines from the top, for queen's read Queens: and *in nota*, in the same page, as to "three miles, three furlongs, three acres, &c.;" add; Sir F. Palgrave states that this is an antient Teutonic form, partly mystical.

In page 51, line 9, for began to prevail, read begun to prevail.

Page 54, *in nota*. The eulogy of Lord Campbell's habitual good nature is not irony. But the carping good humour of his notice of the bishops, which really disfigures an important work, and will surely be suppressed in a future edition, rendered it impossible to pass the passage relating to the prelacy without animadversion. What would

the noble and learned lord say, if Parliament should see occasion to exclude the law-lords from a seat in the Upper House?

Page 61. The note to this page, aiming merely to be pointed, and to perpetrate a *môt*; may, very improperly and mischievously, detract from the force of the remarks in the text. But, so it is with our pleasant sins, or sins of pleasantry, they "make us whips," with which to scourge us. *Add to the text*:—The triumph of one ultra-montane doctrine, might have introduced all the rest. *Add to the note*:—But no enemy could have been more powerful or more dangerous, than the undivided Church of that age, struggling for secular, as well as for spiritual, power.

Page 63. *Add*:—A scrupulous desire to avoid all party bias in treating of these subjects, has prevented—but on consideration, ought not to prevent, the writer, from paying a just tribute to that House of Lords, which adhered to the Third William's Whig ministers, after their dismissal from place and power; and to the same party when turned out of office in Queen Anne's reign; before the creation of peers "by the dozen," restored to the Tories a balance of power in the Lords. Rare is the application in politics of the—

" Vietrix causa Diis placuit, sed victa Catoni."—Lucan.

though, in the worst; that is, in the most thoroughly selfish and worldly times; there will ever be found, in all parties a noble few—

" True, as the dial to the sun,
" Altho' it be not shin'd upon."—*Butler.*

Page 65: "Knights of the shire, *secundæ dignitatis* " *barones.*" Several transcripts of original returns made by the sheriffs of counties to writs "for the performance of "military service," or, "to take the degree of knighthood," preserved among the Cottonian and Harleian manuscripts, are said by Palgrave, (Preface to vol. 1, Parliamentary

Writs), to be extremely curious and valuable, inasmuch as they furnish the names of individuals, who seem to correspond with the *Minores Barones* of King John's Charter.

Page 67, line 2: For *Charta Regis Johannes*, read *Johannis*.

Page 71, *in nota*, for *præstita*, read *præstitus*.

Page 80, fourteen lines from the bottom. For *distincte et aparte*, read *distinctè et apertè*.

Page 106, two lines from the bottom, "*præteritorum eventorum*," a tremendous barbarism! quære *eventuum*?

Page 107. The text says:—In cases where a privilege essentially necessary, is imperfectly evidenced, obscure or doubtful, the fittest course would ever seem to be, to settle the question by a declaratory act. Lord Campbell is of the same opinion: He says, "the Legislature may usefully interfere on particular points;" but (speaking as usual, *ex cathedrâ*) the learned lord adds: "A privilege code I pronounce to be impossible." Yet the learned lord has too strong sense, to "attach much weight to the objection that the privileges of Parliament ought to be undefined." He adds:—"Lord Somers saw the evil arising from the vagueness of privilege, but did not venture on a Legislative remedy."

Page 115, seven lines from the bottom, add: There are two cases; first, the case of Sir W. Williams, Speaker, *temp.* Charles 2, and James 2; and secondly, the case of *Jay v. Topham*, which ought not to pass unnoticed. In both these cases, there were pleas to the jurisdiction of the Court, which were overruled. In both cases, great injustice was done; and there is much for the impartial, legal historian, to reprehend. The Speaker was improperly fined by the Whigs, and the Chief Justice, unjustifiably committed by the Tories. But both cases are valuable for establishing the invalidity of a plea to the jurisdiction of the Court. Of the latter case, Lord Ellenborough remarked that "it was surprising that a judge should have been questioned and committed to prison, by the House of Commons, for

“ having given a judgment, which no other judge who ever
“ sat in his place, could have differed from.”—Judgment in
Burdett v. Abbott, 14 East, 1.

Page 117. By both sides, is here meant,—the partizans
of arbitrary uncontrollable power of commitment, and their
opponents; and not the Legislature and the Judicature
opposed to each other; a collision which is deprecated: and
indeed, an opposition which is unreal, though there may
occur occasional “ fraternal differences.”

Pages 118, 119. *Brevis esse laboro, obscurus fio.* On a
revision of these pages, it is felt, that, to prevent miscon-
ceptions of the real meaning of some passages in the text,—
the respective cases of Thorp, Shaftesbury, Ashby and
White, Paty, and the Aylesbury men, do require to be more
fully stated and observed upon. Thus, no more is intended
to be expressed in the passages relating to *Shaftesbury's* Shaftesbury's
case.
case, than that the judges of latter times acted in con-
formity with the *doctrine* laid down in that case; that,
“ when the commitment is in a general form, the con-
“ tempt cannot be inquired into in another Court.” It is
by no means meant, that deference is due, or could be felt,
by any constitutional lawyers, for the *decision* made by Charles
the Second's servile judges in that case, where the commit-
ment was “ during the pleasure of the King;” and all the
proceedings against Lord Shaftesbury, by a vote of the
House of Lords, were condemned as unparliamentary and
unconstitutional, and the entry of them on the Journals
vacated; so that they might never be drawn into precedent
for the future (a).

Lord Campbell, in his life of Lord Somers, speaks of the
case of *Ashby* and *White*, as “ an attempt by an Ultra Ashby v
White.
“ Tory House of Commons, by an abuse of Parliamentary
“ privilege, to encroach on the just rights of the subject.”
The resolution passed by the House of Commons in that

(a) Lords' Journ. Nov. 13, 1680.

case, was, “ That the qualification of an elector, is not cognizable elsewhere than before the Commons of England in Parliament assembled; and that Ashby, having commenced an action against the bailiff for rejecting his vote, is guilty of a breach of privilege, &c.”

Although this resolution was not pleaded in any of the actions brought, how can it be said, that it was not virtually overruled by a Court of Law; when it was determined *there*, that such question *was* within the jurisdiction of the common law, and that the plaintiff *was* entitled to legal redress for the injury he had suffered? Surely, this was not only an occasion of privilege being grossly abused, but also, an unequivocal instance of a resolution of the House of Commons on a question of Parliamentary privilege, being disregarded and set at nought by the Courts of Law.

But to give effectual weight to this immensely important precedent, the question remains: was this rightly done? In the life of Somers, and in that of Cowper, Lord Campbell favours us with his candid opinion that the case of *Ashby v. White* was correctly decided by Holt, C. J.; that the House usurped a power which it did not possess; and that the only mistake committed by Holt, was his opinion that Paty had a right to be discharged by *habeas corpus*: agreeing so far, with the view taken in the text, page 118; but upon a widely different ground. Not because, as is there intended, Lord Holt, when Paty was brought up on *habeas corpus*, was too astute to discover an excess of jurisdiction apparent on the face of the warrant itself, which did not really exist;—but “ because,” says Lord Campbell, “ the Court of King’s Bench had no right to examine the warrant of a superior Court.”

Here then, is found, first; a complete surrender of the right of the House to declare Privilege against Law, even on a point peculiarly within its own jurisdiction,—the right of voting at elections; 2ndly, herein is contained a clear assertion of the duty of the Courts, to form their own

opinion upon such matters; and to act upon that opinion; though directly at variance with the declared judgment of the House, (supported, in *Ashby and White*, by the highest Parliamentary and legal authorities, and maintained by a large majority, through a series of oppressive persecutions, to the danger of the tranquillity of the State). Among other important admissions, Lord Campbell says, "It was not easy to contend that a resolution of the House of Commons, respecting their privileges, is binding on all other tribunals, when it may be and has been, carried to such an extravagant pitch, &c."

If the greatest case of privilege on record, the case of *Ashby and White*; that, which is supported by the highest authority, and was pushed to the most extreme consequences, is now surrendered at discretion by this doughty champion of privilege, and rightly, and much to his honour, condemned, as a mass of usurpation and oppression; may it not occur to Lord Campbell to entertain a little doubt, what judgment posterity will pass on the proceedings of the House of Commons, in some cases occurring in other days?

And, perhaps, since Lord Campbell, in the life of Cowper, most truly says, that "a dangerous wound was given to real and sound Parliamentary privilege, by this outrageous abuse of it in *Ashby and White*;" he may, in the next series of his interesting Lives of the Chancellors, find some fit occasion for reconsidering the ground of his complaint against that truly great judge, who made the noble stand against the unwarrantable claims of privilege in 1702. The error imputed to Holt, is, for presuming to execute the law, by giving liberty to a subject unlawfully detained in prison by the illegal warrant of a superior Court. What Holt held, (and, it is believed, with submission, rightly held); was, that every Court, which sees upon the face of such warrant, that it was issued against law, is bound to act upon what it sees, and cannot decline the duty of discharging the prisoner. Where he was probably wrong, was, in finding the insufficient cause in that particular case

Paty's Case.

on the face of the warrant against Paty and other freemen of Aylesbury. If a Court of Law cannot look at a warrant, to see whether it, of itself, may not negative contempt and breach of privilege, what becomes of Lord Ellenborough's declaration, that, if it did show what did not amount to a contempt, he would "do his duty" (a)? What of Lord Kenyon's avowal, that "cases might be put, in which the "Court would inquire whether the House of Commons "were justified in any particular measure" (b). It is, doubtless, admitted that either House has the *power* to evade the law, by concealing the cause of issuing the warrant when the cause will not bear investigation, a course lately taken, and twice boasted of; but in what, are even some practical and plain men, said to glory?—A course, which amounts to a virtual repeal of the Habeas Corpus Act.

Page 121, fifteen lines from the bottom, read: Although the judges in this case evidently perceived, and must have disapproved, the *suppressio veri*, and fully appreciated the motive, since avowed by Lord Campbell in his life of Shaftesbury, they did not swerve from their line of duty.

Page 132, line 3. For Petition of Rights, read Petition of Right.

Page 135, sixteen lines from the bottom, read: Leave to file a criminal information was refused, &c.; and for on the ground, read one of the reasons stated by the judges, being.

Page 136, *Dele* reference (a) *R. v. Flower*, and substitute *Burdett v. Abbott*, 14 East, 1.

Page 140, line 10. After "the person of a peer is,"—insert pronounced by Blackstone, to be—ever sacred and inviolable. The position should be taken, under the shelter of authority. Indeed, now that privilege of peerage is abolished, (see page 172), and a peer may be hanged on being convicted of a capital offence; the expression, (always extravagant and fulsome), cannot be held to be at all correct.

(a) *Burdett v. Abbott*, 14 East, 1. (b) *R. v. Wright*, 8 T. R. 283.

Page 144. It may be thought that the solution of the difficulty in *Thorp's case*, (why the Speaker continued in custody, when the opinion of the judges was favourable to his liberation), given in the text as furnished by Latch, ought to be stated as a conjecture. But it really is more. It will be found to be a fact, (as stated in Fortescue's answer in the name of all the judges), that the effect of a general *superseas*, had been considered by the assembled judges, and was expressly reported upon by them. This explanation is therefore, still relied upon, not only as natural and probable, but as the only rational mode of accounting for such a termination of the inquiry. Thorp's Case.

Thorp's case has been more frequently quoted, and more completely misrepresented, than any other in our books. A late noble writer, whose position and learning might have been expected to secure him against error on subjects of this nature, has stated it,—it must be affirmed, (and that not dogmatically, or without respect to the noble and learned historian, but from a sincere conviction, the result of sober inquiry); in every particular, not only inaccurately, but in direct opposition to the historical truth. Lord Campbell says that “that case,” (which was the most disgraceful and cowardly abandonment of their undeniable rights by both Houses of Parliament, ever known); was “the foundation “of Parliamentary privilege, to which our liberties are “mainly to be ascribed” (a): while the case distinctly proves, that the privilege in question (of freedom from arrest) had existed for ages, but was in that instance basely abandoned by its proper guardians. Lord Campbell states privilege to have been the “concession,” (*eo nomine*) ‘of a Common Law Judge’ (Fortescue); when it is, and by sound constitutional writers is always claimed to be, manifestly inherent in the nature of the Parliament: he alleges that the judges professed themselves unable to decide questions of privilege in their own Courts; when their answer

(a) Life of Fortescue, vol. 1, p. 376.

shews them to have been in the constant habit of deciding such questions *there*. He overlooks (for he could not intentionally omit) the most material part of the answer delivered by Chief Justice Fortescue, in the name of the judges, to the question laid before them.

The judges in Thorp's case, called upon to pronounce on the custom and privilege of Parliament out of their own Courts and when it did not come judicially before them, properly declined to answer the question of privilege submitted to them; with becoming deference to the superior Court,—with consummate skill, and unmeaning protestations. The Commons well knew, that their member and Speaker, was free from arrest; yet they dared not demand his liberation, because it was an aspirant to the Crown who had arrested him. They, therefore, meanly threw on the Lords, the difficulty they themselves shrunk from encountering; and the Lords shabbily tried to put it upon the judges. The judges avoided the snare; said they had no voice in the House of Lords, where Parliament had oracles of its own, and where they could “make and unmake laws at their “pleasure,” (the sly rogues;) but did intimate (*a*),—and that not obscurely,—what they would do in their own Courts; stating the law upon the subject, at once with fulness and precision, and enumerating the particular cases in which alone they considered that a member could be detained in custody: a strange mode of professing their incompetency to judge of such questions!

While nobly asserting their freedom of action, and full determination to do justice to all suitors in their own Courts, and declaring that the Parliament could not “lette “the processe of the comune law, and put the party com-
“pleynant without remedie; for so much as actions at
“comune law, be not determined in this High Court of
“Parliament” (*b*), they disapproved of the form used to procure the member's liberation in the particular case, and

(*a*) So viewed by Lord Ellesmere, in the case of the *Postnati*, p. 21.

(*b*) Entirely omitted by Lord Campbell.

stated the objections to “ a general *supersedeas* to all “ actions.” Of this fault in the process, it is plausibly surmised in the case in *Latch*, that the two Houses availed themselves, to get rid of the question; not having the courage or honesty, in that delicate case of a *King-in-posse* plaintiff, to maintain and enforce their just privilege which they always possessed. And this base dereliction of their duty,—this cowardly abandonment of their undoubted right, is what Lord Campbell holds up, as the conceded origin and primary foundation of Parliamentary privilege (*a*). Save privilege from its friends!

Lord Campbell says, that “ Fortescue had the sagacity to “ see, that if questions concerning the privileges of Parli- “ ment were to be determined by the common law judges, “ appointed and removable by the Crown, these privileges “ must soon be extinguished, and pure despotism must be “ established.” The case of *Thorp*, rightly understood, exhibits the judges as recognizing and supporting the important Parliamentary privilege, (so essential to the discharge of their duties, by members of either House), of freedom from arrest; and it shows the two Houses shrinking from its assertion and maintenance, in the most servile spirit and from the most dastardly motives.

Another remarkable case, is that of Mr. Wilkes, in 1763, when the case of writing and publishing seditious libels, was brought before the Court of Common Pleas. It was there decided, that “ privilege was a protection against arrest “ in such cases.” But the offender in that case was odious to the Court and Government; and a complaisant House of Commons denied that they possessed the privilege, which a Court of Law had allowed them. The Lords, after a most remarkable debate, followed this example; and resolved that a member of Parliament, charged with libel, was liable to arrest. Here are two instances, in which the common law judges,—removable and irremovable,—rightly

(*a*) See a very able article in the *Law Journal*, No. 7, in a Review of the Lives of the Chancellors.

or wrongly,—it matters not; supported privileges which the House itself renounced and abandoned. Are the judges, then, (now made independent of the Crown), peculiarly or by comparison, servile; and must they necessarily be distrusted on one subject alone, that of Parliamentary privilege? upon which, if they have sometimes held erroneous opinions, (which is not disputed;) their mistake has always been on the side of the privilege claimed.

Again, (which is of far more serious consequence), Lord Campbell hardily asserts, that the doctrine of privilege established in *Thorp's case*, (according to his perversion of the words employed), “had never been doubted by judges, “from the reign of Henry 6, till the days of Queen “Victoria;” when, on the contrary, *his* doctrine (which was not established in that case) has scarcely escaped without censure, from judges of the highest character, under any one of the thirteen sovereigns, who have filled the throne between 1451 and the present reign. What have been the sentiments of Holt, Willes, Kenyon, Ellenborough? That regardless of any resolutions of either House of Parliament, if they saw upon the document before them, the unjust imprisonment of the subject, or any gross violation of law and justice, they, presiding in Courts of law, would act in accordance with their oaths and do their duty. When it is represented that doctrines received “with profound defer-
“ence and veneration,” through successive ages, have been subverted by recent decisions; what is this but to volunteer a condemnation of the sworn judges of the land of our own time; to denounce them to their Sovereign,—to the Peers,—to the—not very dispassionate House of Commons,—and to all ranks of their fellow subjects, as ignorant and rash expounders of the law;—as wild and reckless innovators? Now, is this considerate? It may not be ill intended, but is it decent?

And to what influencing cause,—to what secret agency,—(not of a discreditable nature,) will this gratuitous attack upon these upright and venerated judges be ascribed? To

one which would have deterred a person of less boldness, and of more delicacy, than this learned nobleman, from meddling with the conduct of the judges; to the bias naturally produced on his own mind, from his character of advocate in the cause, and adviser of all the, not-successful, measures taken.

The respect due to the station, as well as to the learning and talents of the distinguished nobleman, whose work has been the subject of remark, required some detail of particulars, both on the present occasion and in other instances, when important doctrines were under discussion. And if the advocate, who, after having exhausted the subject, in an argument of very great ability and learning, and failed in the Court to which he counselled his client to resort, chooses to forego his right to reverse the adverse judgment in the Court of Error, which the Constitution provides for unsuccessful suitors; and making the appeal to himself, as an impartial historian, turns on his judges and holds them up to public condemnation; *he* creates a necessity for scrutinizing the pretensions of this new tribunal, to the praise of care, fidelity, consistency and truth. It is because Lord Campbell constantly obtrudes his opinions of privilege upon his readers, and pronounces them authoritatively; because the sentiments of others, who differ from him, are treated with scorn, and contempt; because “at every breath a reputation dies;” that the claims of this learned lord, to be considered so conclusive an authority upon subjects of archæology, law, and history, and still more upon sound constitutional principles, must be fearlessly examined.

If Lord Campbell must not rest his character for accuracy, on his statements or citations, in the great case of Thorp in his *Life of Fortescue*; or, according to Sir Harris Nicholas, on the fidelity of his narration in the life of Sir Christopher Hatton; neither must he on his statement of the highly important decision in the case of the *Bishop of London v. Fytche*, in his *Life of Thurlow*. Lord Campbell,

professing to have devoted the most laborious attention to the life of that great judge; complaining that Lord Chancellor Thurlow has come to be undervalued by posterity; anxious to vindicate his high judicial character, and writing his life *con amore*; records that very memorable Law, and "Church and State" decision, in a few lines below cited (a), and states it untruly. He asserts Lord Thurlow to have upheld, "with great boldness in the House of Lords," the very doctrine which he boldly overturned; the old law of resignation bonds. In that well-known case, the law, practice, and authority of centuries, was set aside, by the courage certainly of Lord Thurlow; but displayed on the opposite side, to what Lord Campbell represents, and by the Chancellor's determined adherence to the true principles of the law, in defiance of precedent. Yet Lord Campbell asserts Lord Thurlow to have upheld in the House of Lords, the very doctrine which he triumphantly overthrew there, against the opinion of Westminster Hall!

In the Court of Chancery, Lord Thurlow yielded to a long series of precedents, and to the almost universal sense of the Profession; but in the House of Lords, he departed from the course of decision which had before prevailed in Westminster Hall, and founding himself upon great and broad principles of civil and ecclesiastical policy, achieved a signal triumph. In his judgment in the Lords, Lord Thurlow asks, "whether a bond of resignation given by a

(a) "In *Bishop of London v. Fytche*, the question arose, whether "bonds given by an incumbent to the patron of a living, for resigning on request, are lawful? The Chancellor gave a strong opinion in favour of their legality, insisting not only that they were not simoniacal, but that they were not contrary to public policy, and that being properly controlled by a Court of Equity they might be very salutary. He repeated this opinion with great boldness, when the question came before the House of Lords. But the judges being consulted, were divided upon it, and the bishops taking the contrary side and voting, there was a reversal by a majority of 19 to 18; so that general resignation bonds have since been unlawful; although there may still be a bond conditioned for the resignation of the incumbent on the patron's coming of age, and being in holy orders."—*Life of Lord Thurlow*, vol. 5, p. 523.

“ Judge or a Master in Chancery, would be good ?” He says,
 “ A Master in Chancery is an officer appointed for life.
 “ Suppose the Chancellor has the appointment, and suppose
 “ such Master gives a bond to resign when called upon,
 “ would that bond be good at common law ? No ! because
 “ it is not only contrary to the constitution of his office, but
 “ because the public has an interest in the independence of
 “ that officer, as being appointed for life, and a public law
 “ officer. His place is independent, it being *quamdiu se*
 “ *bene gesserit*. If he be an officer for life, how can any
 “ private man whatsoever, because it is his province to
 “ appoint him, take upon him to render that officer’s situ-
 “ ation, what the law says it shall not be ?” The decision
 proceeded, as has been said by Lord Tenterden, “ upon
 “ one of two reasons, or, perhaps, upon both : the reasons
 “ being, that the bond was within the statute of Elizabeth
 “ against simony, and so void by that statute ; or, that
 “ the effect of the bond was to convert into an estate
 “ at will, an office which the law considers to be a freehold,
 “ and will not allow to be less than a freehold ; and so the
 “ bond is void at common law” (a).

As Lord Campbell extends his remarks in his concluding sentence to the present state of the law, it must appear surprising to every lawyer, that he should not have noticed the important case of *Fletcher v. Lord Sondes*, which determined, that a bond for resigning a living in favour of one of two brothers, was void. This latter case extended the principle of the decision in the *Bishop of London v. Fytche* to the case of special resignation bonds ; and rendered such bonds, as Lord Campbell states may still be given, invalid at common law ; they now depend upon statutory provisions, 7 & 8 Geo. 4, c. 25, s. 1, and 9 Geo. 4, c. 94.

This oversight, of so splendid a judicial triumph, (where Mansfield and Kenyon were opposed to him), and the

(a) In his judgment in *Fletcher v. Lord Sondes*, 3 Bingham’s Rep. p. 594.

assertion that Lord Thurlow boldly upheld the validity of general resignation bonds in the House of Lords, is most extraordinary, and a marvellous error in a friendly biographer, well disposed to exalt Lord Thurlow's merits as a judge. To be sure, *he* is a poor creature, who has not committed as great mistakes, in composition or in conduct, among—

“The fervid errors, and the faults of such

“As wrongly feel, because they feel too much.”

But this liability to errors,—

“*Quas vel incuria fudit,*

“*Vel humana parum cavet natura,*”—

should make us indulgent and tolerant of what we consider the erroneous opinions of others; should correct all assumption and arrogance; and tend to the establishment, among the innumerable controversies of the learned, of that salutary maxim: “*in dubiis libertas; in omnibus caritas.*”

Page 145, line 1. For *Clark's* case, read *Clerke's* case; and in Index, for Clerke, 45, read: 145.

Page 151, line 6. After 10 Geo. 3, add: c. 50.

Page 157, 13 lines from the bottom, read: In the case of the *Duchess of Somerset*.

Page 162, 14 lines from the bottom. After challenging a member, add; to fight.

Page 164, 11 lines from the bottom, to The House of Lords claims to be a Court of Record, annex this reference (c). See the *dictum* of Lord Kenyon in *Flower's case*, 8 T. R. 314, that “the House of Lords, when exercising a legislative capacity, is not a Court of Record.”

Page 164, 3 lines from the bottom. To the House of Commons, which is not a Court of Record, annex this reference (d). See it expressly declared by Lord Mansfield, in *Jones v. Randall*, Cowp. 17, that “the Commons' House is not a Court of Record.”

Page 165. The text says of *Floyd's case*, the Lords equally disgraced themselves in this case: Add: by a

sentence of still more outrageous severity, to wit, “ that
“ Floyd should be incapable of bearing arms as a gentleman ;
“ that he should be ever held an infamous person, and his
“ testimony not to be taken in any Court or cause ; that he
“ should be branded on the forehead ; be whipped at the
“ cart’s tail ; be fined £5000, and imprisoned in Newgate
“ for life.”

Page 166, line 17, add, In this case of *Howard v. Gosset*, the judgment of the Court of Queen’s Bench has been since reversed ; but upon grounds which do not affect the general question.

Page 167. The third case mentioned in this page, besides the cases of *Parrott*, and of *Baker*, is founded on the petition of *David Philipps, of Buckfastleigh*. See Appendix to Petitions of 1845, page 466.

Page 169. See in Palgrave’s Preface to Vol. 2, *Parliamentary Writs*, that it appears by a proxy still extant of the time of Edward II., that a Peer might appoint individuals not possessing seats in Parliament, as his proxies, to appear on his behalf, in that assembly.

Page 187. After the Bishop of Sodor and Man has no seat in Parliament ; add : And now it is provided by 10 & 11 Vict. c. 108, as follows :—“ That the number of
“ Lords Spiritual, now sitting and voting as Lords of Par-
“ liament, shall not be increased by the creation of the
“ Bishoprick of Manchester ; and whenever there shall be
“ a vacancy among the Lords Spiritual, by the avoidance
“ of any one of the Sees of Canterbury, York, London,
“ Durham, or Winchester, or of any other See which shall
“ be filled by the translation thereto, from any other See,
“ of a Bishop at that time actually sitting as a Lord of Par-
“ liament, such vacancy shall be supplied by the issue of a
“ Writ of Summons to the Bishop who shall be elected to
“ the same See ; but if such vacancy be caused by avoidance
“ of any other See in England or Wales, such vacancy shall
“ be supplied by the issue of a Writ of Summons to that
“ Bishop of a See in England or Wales, who shall not have

“ previously become entitled to such Writ ; and no Bishop
 “ who shall be hereafter elected to any See in England or
 “ Wales not being one of the Five Sees above named, shall
 “ be entitled to have a Writ of Summons, unless in the order
 “ and according to the conditions above prescribed.”

Pages 217, 218. After the rule and practice of the Lords is, to receive no message from the Commons, unless *eight* members attend it; and in the next page, after: When the Lords send any messages to the Commons, it is always by two messengers; add: On the 12th of July, 1847, the Lords communicated to the Commons the following Resolutions, which had been adopted by their Lordship's House:—

1st. “ That the Lords are willing to receive from the
 “ Commons in one Message all Commons' Bills, when first
 “ brought up to this House; all Lords' Bills returned from
 “ the House of Commons without any amendment made
 “ thereto; and all Commons' Bills returned therefrom with
 “ the Lords' amendments thereto, agreed to without any
 “ amendment; a list of such Bills, with a statement of the
 “ assent of the Commons thereto, being brought by the
 “ messengers from the House of Commons, and delivered
 “ together with the Bills so brought up.

2nd. “ That, whereas by custom heretofore, all Messages
 “ from the House of Commons to the House of Lords, have
 “ been attended by eight members of the House of Com-
 “ mons—and whereas the attendance of so many, may
 “ occasionally be inconvenient to the members of the said
 “ House: The Lords desire to communicate to the Com-
 “ mons their willingness to receive such Messages when
 “ brought up by five members only.”

This Resolution was assented to by the House of Commons on 13th of July, and it was, at the same time
 “ *Resolved*, That it is the opinion of this Committee, that the
 “ Commons should be willing to receive Messages from the
 “ Lords brought by one Master in Chancery, instead of two
 “ Masters as heretofore.”

This last Resolution was ordered to be communicated to the Lords at a Conference, when the Lords 19 *die Julii*, agreed thereto.

Page 275. Add *in nota*. For Returns of Papers, Accounts, &c., whether by Order or Address, according to the circumstances; their presentment, printing, and distribution, under the direction of the Printing Committee; so, for Petitions, their mode of presentment and reference to the Committee on Public Petitions; and the ballot of members for precedence in presenting Petitions, &c. See May, 300-315.

Page 289, line 11, for Election Committees, read Select Committees.

Page 305, for Chairman's panel, read Chairmen's panel.

Page 309, at top of the page, for Select Report, read Special Report.

Page 317, at the top of the page, for Of Election Committees, read Of Select Committees.

Page 348, line 2, add:—And now, by Standing Orders of the House of Commons recently adopted upon the general subject of Petitions, regulating their mode of presentment and discussion, when they shall be printed with the votes, and when referred to a Committee; it is ordered:—“That subject to the above regulations, petitions against
“any resolution or bill, imposing a tax or duty for the
“current service of the year, be henceforth received, and
“the usage under which the House has refused to entertain
“such petitions, be discontinued” (a).

Page 355, *in nota*. By amended orders of both Houses of a later date, 22nd July, 1847, private bills are now divided into *two* instead of into *three* classes, as follows:

1st CLASS. “Burial ground, altering;—making, or maintaining;

“Charters and corporations, enlarging or altering powers of;

(a) Com. Journ. 791.

- “ Church or chapel, building, enlarging, repairing or
“ maintaining;
- “ City or town, paving, lighting, watching, cleansing,
“ or improving;
- “ Company, incorporating, or giving powers to;
- “ County rate;
- “ County or shire-hall, court house;
- “ Crown, church, or corporation property, or property
“ held in trust for public or charitable purposes;
- “ Fishery, making, maintaining, or improving;
- “ Gaol, or house of correction;
- “ Land, inclosing, draining, or improving;
- “ Letters patent, confirming, prolonging, or transferring
“ the term of;
- “ Local court, constituting;
- “ Market, or market-place, erecting, improving, re-
“ pairing, maintaining, or regulating;
- “ Poor, maintaining, or employing;
- “ Poor rate;
- “ Powers to sue and be sued, conferring;
- “ Sewers and sewerage;
- “ Stipendiary magistrate, or any public officer, pay-
“ ment of; And,
- “ Continuing, or amending an act passed for any of
“ the purposes included in this or the second class,
“ where no further work than such as was authorized
“ by a former act, is proposed to be made.

2nd CLASS. “ Making, maintaining, varying, extending,
“ or enlarging, any aqueduct, archway, bridge, canal,
“ cut, dock, ferry, harbour, navigation, pier, port, rail-
“ way, reservoir, tunnel, turnpike road, water work.”

To which is added in the Standing Order of the Lords:
“ Making and maintaining any cut for drainage, being a
“ new work, where the same is to be of twelve feet width
“ or more, at bottom.”

By the Commons it is ordered: “ That in all cases
“ where application is intended to be made for leave to

“ bring in a bill, relating to the subjects included in either
“ of the two classes of Private Bills, notices be given,
“ stating the objects of such intended application,” &c. (a).

Page 356. Publication of Notices, line 8, after “city,”
add, “county of a city;” and after “town,” add: “county
“ of a town:” and after “county adjoining or near thereto,”
add (b): “And if such bill relate to lands situate in more
“ than one county, such notices shall be inserted in three
“ successive weeks, in some newspaper or newspapers, which
“ shall be published in London, at least six days in the
“ week, or in Edinburgh or Dublin, at least three days in
“ the week, as the case may be, and in a newspaper of the
“ county in which the principal office of the company or
“ companies who are the promoters of the bill, shall be
“ situate, and in a newspaper of every county in which any
“ new works are proposed to be constructed, or in which any
“ lands are situate, in respect of which any new or further
“ powers for the completion of works already authorized,
“ are intended to be applied for.”

Five lines from the bottom, after “description of the
“ undertaking,” add: “or bill.”

Page 357, line 3, after “owners, lessees, and occupiers,”
add: “of all lands and houses in the line of the proposed
“ work, or within the limits of deviation” (c).

Line 6, after assent, add: “or forwarded by post, ad-
“ dressed with a sufficient direction to his usual place of
“ abode, and posted at such time, that the same would, in
“ the ordinary course of post, be delivered on, or before,
“ the 15th of December (d). In the case of an application
“ forwarded by post, the due receipt thereof by the party
“ applied to, must be proved by his written acknow-
“ ledgment, and in cases of application, served otherwise
“ than by post, by production of a written acknowledg-
“ ment,” &c. (e).

(a) Com. S. O. No. 11.

(b) Ib. No. 15.

(c) Ib. No. 16.

(d) Com. S. O. No. 17.

(e) Ib. No. 18.

As to owners of Crown property, &c., prefix: "Before
"the deposit of a petition for leave to bring in a bill,"
&c. (a).

The Standing Orders relating to the affixing of notices
on Church doors, are omitted in the Amended Orders of
July, 1847.

Page 358, in the case of Scotland, in lieu of notices
being affixed to the Church doors, a practice there dis-
approved, read: "must be affixed to the door of the Sheriff's
"Court-house of each county, or district on division of a
"county, in, or through which, &c., once in each of three
"successive weeks in the months," &c. (b).

Five lines from the bottom, after "books of reference,"
insert: "and copy of the Gazette notice;" after "clerks of
"the peace," "sheriff's clerks;" and after, "schoolmasters,"
"sessions clerks," &c. (c).

Page 360, line 3, after "such parish in England," insert:
"or in the case of any extra parochial place, with the parish
"clerk of some parish immediately adjoining thereto;" and
after "schoolmaster in Scotland," add: "or if there be no
"such schoolmaster of any such parish, then with the
"session clerk," &c. (d).

As to deposits of pleas, sections, and references in the
Private Bill Office, add: "in the case of railways: and also
"a copy of the published map, with the line of railway
"delineated thereon" (e).

Names of sub-
scribers, &c.

Page 361, line 17, add: "And the legal description and
"seal of any corporate body being a party to such contract;
"and the total amount of such subscriptions, and of the
"sums so paid up" (f).

Eight lines from the bottom, after "copies of the," insert:
"estimate of expense of the undertaking under such bill;"
and 6 lines from the bottom, insert after "subscriber," "and

(a) Com. S. O. No. 20.

(b) Lords' S. O. No. 223, s. 2.

(c) Com. S. O. No. 12.

(d) Com. S. O. No. 30.

(e) Ib. No. 29.

(f) Ib. No. 53.

“the total amount of such subscriptions, and of the sums
“so paid up” (*a*).

Page 362, line 4, after “owners,” insert: “lessees or
“reported lessees.”

Ib. Line 10, after “deemed valid,” add: “except in the
“case of delivering of letters by post” (*b*).

As regards the deposit of Railway Bills; in lieu of office
“of the railway department of the Board of Trade,” sub-
stitute “of the Commissioners of Railways” (*c*).

Eight lines from the bottom, after: “No subscription
“contract,” read “will be valid unless it be entered into
“subsequent to the commencement of the previous session,
“and unless,” &c. (*d*).

Page 363, line 12, after “feet and inches,” insert “or
“decimal parts of a foot.”

Line 20, after “every crossing thereof,” add: “And
“when the railway will be carried across any such road
“or railway on the level thereof, such crossing to be so
“described on the section; and it must also be stated, if
“such level will be unaltered” (*e*).

Thirteen lines from the bottom, after “be added,” insert:
“which must show the present surface of such road or
“railway, and the intended surface thereof when altered;—
“and the average, and also the greatest, of the present and
“intended rates of inclination, must also be marked in
“figures thereon” (*f*).

Page 364, line 2, substitute “Office of the Commissioners
“of Railways,” for the Board of Trade.

As to deposits of documents relating to Joint Stock
Companies, read “such bills being bills of the first class;”
in lieu of bills of the third class.

Page 366, “no notice will be deemed valid,” add: “except
“as before excepted, in the case of delivery of letters by
“post.”

(*a*) Com. S. O. No. 36.

(*b*) Ib. No. 23.

(*c*) Ib. No. 37.

(*d*) Ib. No. 55.

(*e*) Ib. No. 48.

(*f*) Ib. No. 49.

Page 378. To the order for deposits of the petition for a bill, add: "The declaration of agent to state, to which of
 "the two classes of bills, such bill belongs, and a copy
 "of the bill annexed to the petition to be deposited
 "in the office of the commissioners of railways in place
 "of the Board of Trade." And to the order for a list
 of petitions to be kept, add: "which shall be called the
 " 'General List of Petitions,' and each petition therein shall
 "be numbered"(a).

In what case
 memorials to
 be deposited
 and at what
 hours.

Add, that by a new order of the Commons (b). "All
 "memorials complaining of non-compliance with the
 "Standing Orders, in reference to petitions for bills depo-
 "sited in the Private Bill Office on or before the 31st
 "December, shall be deposited as follows:

"If the same relate to petitions for bills numbered in the
 "General List of Petitions ;

From

1 to 100	} They shall be deposited {	January 6th
101 to 200		„ 13th
201 to 300		„ 20th
301 and upwards		„ 27th

"And in the case of any petitions for bills which may be
 "deposited by leave of the House after the 31st December,
 "such memorials shall be deposited three clear days before
 "the day first appointed for the examination of the
 "petition.

Deposite of
 memorials
 in Private
 Bill Office.

"That all memorials be deposited in the Private Bill
 "Office before six of the clock in the evening of any day
 "on which the House shall sit, and before two of the clock
 "on any day on which the House shall not sit; and that
 "two copies of every such memorial be deposited for the
 "use of the examiners before twelve of the clock on the
 "following day."

Remonstrance
 with prayer,
 received as
 Petition.

Page 381, six lines from the bottom, add: A remon-
 strance concluding with a prayer, is received as a petition.

(a) Com. S. O. 173.

(b) Com. S. O. 174, 175.

Page 390. An Act since passed, has empowered the Speaker to appoint a fit person to be the taxing officer of the House of Commons.—See p. 896. “The House of Commons’ Costs Taxation Act.”

Page 391, line 12, after “the party;” insert: “if any; who may be specially affected.”

Page 392, line 1, insert: “on petitions for additional provision referred to the Examiner, he is to give at least two clear days’ notice of the day on which the same will be examined” (a).

Page 393, five lines from the bottom, add: “or if the House be not sitting, not later than three clear days after the first sitting thereof, subsequent to such endorsement” (b).

Page 396. First reading, insert the following new order of the House of Commons: “That no private bill be read a first time unless it be presented not later than three clear days after the presentation of the petition for leave to bring in the same” (c).

Before second reading, “there shall be not less than three nor more than ten clear days, except by special order of the House” (d).

Page 397, line 9, instead of “two calendar months,” read “six weeks.”

Page 398. For “Committee of Selections,” read “Committee of Selection.” Committee of Selection to consist of the chairman of the committee on Standing Orders, “and four other members ‘to be nominated at the commencement of every session,’ &c.” “A printed copy of the bill to be laid before the Committee of Selection at the first meeting of the committee, held after the 10th January in each year.”

The constitution of committees on opposed bills rests now with the Committee of Selection by Com. S. O. 79; see for regulations of the same, the succeeding Standing Orders (e).

(a) Com. S. O. 66.

(b) Com. S. O. 144.

(c) Com. S. O. 145.

(d) Com. S. O. 74.

(e) Com. S. O. 123.

Page 399, fourteen lines from the bottom, for “seven clear days,” read “fourteen” (*a*).

Page 400, fifteen lines from the bottom, for “before the door is locked, &c.” read “before the chairman shall have taken the chair.”

Page 407. “Level of roads,” read “the ascent of any turnpike road, or of any road in Ireland, so defined in 8 Vict. c. 20, shall not be more than *one* foot in 30 feet, and of any other public carriage road, not more than one foot in twenty feet.”

The following are new added rules of great practical importance and no little stringency.

“That no railway company shall be authorized to construct or acquire any dock, pier, harbour, or ferry, or acquire or use any steam vessels, or apply any portion of their capital or revenue to other objects, distinct from their undertaking, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded (*b*).

“That the railway shall not be exempt from the provisions of the present and any future general acts, or from any future revision of the maximum charges (*c*).

“A clause prohibiting the payment of any interest or dividend in respect of calls, out of any capital (*d*).

“A clause prohibiting the company from paying out of the capital, raised for the purposes of any existing act, the deposits required to be made for the purposes of any application for a bill for the construction of another railway (*e*).

“That no powers of purchase, sale, lease, or amalgamation shall be contained in any bill for the construction of a railway (*f*).

“That no powers of purchase, sale, lease, or amalgamation shall be given to any company, unless they shall have

(*a*) Com. S. O. 85.

(*b*) Com. S. O. 120.

(*c*) Com. S. O. 122.

(*d*) Com. S. O. 124.

(*e*) Com. S. O. 125.

(*f*) Com. S. O. 126.

“ previously proved to the commissioners of railways that
“ they have paid up and expended one-half of their
“ capital (a).

“ That no company shall be authorized, except for the
“ execution of its original line, to guarantee interest on any
“ shares issued for creating additional capital, or to guarantee
“ any rent or dividend to any other company, until they
“ have completed and opened such original line (b).

“ That in bills for the amalgamation of companies the
“ amount of capital created by such amalgamation shall in
“ no case exceed the sum of the capitals of the companies
“ so amalgamated (c).

“ That in bills for empowering any company to purchase
“ any other railway, no addition shall be authorised to the
“ capital of the purchasing company, beyond the amount of
“ the capital of the railway purchased” (d).

Page 408, line 7. Substitute “ railway commissioners”
“ for Board of Trade.”

Page 409. Add: “ The committee are to fix the tolls, and
“ determine the *maximum* rates of charge for the conveyance
“ of passengers, with a due amount of luggage, and of goods
“ on the railway; or if they omit so to do, they are to make a
“ special report to accompany the report of the bill” (e).

Page 411, seven lines from the bottom. It is now ordered
by the Commons that “all questions before committees on
“ private bills, shall be decided by a majority of voices,
“ including the voice of the chairman; and whenever the
“ voices are equal, the chairman shall have a second or
“ casting vote” (f).

Page 417. Relating to breviate, insert: “ except where
“ the committee shall have reported the amendments to be
“ merely verbal or literal;” and—“ laid upon the table—
“ at least one clear day.”

Page 420, line 6, after “ Private Bill Office;” add: “ and

(a) Com. S. O. 127.

(b) Com. S. O. 128.

(c) Com. S. O. 129.

(d) Com. S. O. 130.

(e) Com. S. O. 94.

(f) Com. S. O. 94.

“ if any amendments be intended to be proposed thereto, a
 “ copy of such amendments also to be deposited, and notice
 “ given thereof.”

It is further ordered by the Commons: “ That each day,
 “ so soon as the House shall be ready to proceed to private
 “ business, the clerk at the table shall read from the private
 “ business list, the titles of the several bills set down
 “ therein, according to their precedence, as arranged under
 “ the following heads:—

“ 1. Considerations of Lords’ Amendments.

“ 2. Third Reading.

“ 3. Consideration of report.

“ 4. Second reading;

“ And if upon the reading of each such title, as aforesaid,
 “ no motion shall be made, with respect to such private bill,
 “ the further proceedings thereon, shall be adjourned until
 “ the next sitting of the House” (a).

Order 3. Read after “ private bills,” “ included in either
 “ of the classes above mentioned.”

Three lines from the bottom, after “ second;” insert
 “ sitting day.”

Page 421, five lines from the bottom, after “ established,”
 add: “ or to sell or lease their undertaking, or any part
 “ thereof, or to amalgamate the same or any part thereof,
 “ with any other undertaking, shall be allowed to proceed
 “ unless the committee on Standing Orders shall have
 “ reported, &c.” (b).

Page 422. Proprietor dissenting, after “ execute,” add:
 “ undertake or contribute towards.” And after “ established,”
 add: “ or to sell or lease their undertaking, or to amalga-
 “ mate the same with any other undertaking, and who dis-
 “ sented at the meeting of proprietors to whom the draft of
 “ the proposed bill was submitted” (c).

Page 428. Deposits of copy of amended bill to be made
 with the commissioners of railways before third reading.

(a) Com. S. O. 176.

(b) Lords’ S. O., No. 220, § 6.

(c) Lords’ S. O. 231.

Page 454, *in nota*. After *ante*, add: p. 390.

Page 515, for Exceptions at the top of the page, and in the margin, read: Exception.

Page 516, line 5. For indictment is not within, read: Defendant is not within.

Page 550, 9 lines from the bottom, add: Lord Ellesmere says, "there be four forms of interpretation of laws; 1. "Historical; 2. Etymological; 3. Analogical; 4. Practical. "The first he disregards, as always uncertain; the second "he disapproves, as *levis et fallax*; the third and fourth he "approves, as means of arriving at a safe conclusion *per* "similia, and by sound ratiocination. Case of *Postnati*."

Page 573, reference (*e*), for 4 Bingham, read: 3 Bingham.

Page 581, two lines from the bottom, for are, read: were.

Page 582, line 1, for is, read: was.

Page 587, add: "Lord Ellesmere says, it is a rule of interpretation, which is certain and faileth not; *ne quid absurdum, ne quid illusorium admittatur*."

Page 611, line 4, add: In a late case, Lord Denman said: "Directory is the most healing word in the legal "vocabulary, but it is not always applicable to these cases." MS. case.

Page 623. Add: Cases excepted out of the law, or dispensations with the law, are not unskillfully treated by Sir "Christopher Hatton. He says: 'All statutes may be "expounded by equity, so far forth as Epicaia goeth: that "is, an exception of the law of God and law of reason, "from the general words of the law of man. For such "cases are taken for understood, and what is understood, is "not out of the law. The statute of *Articuli super Chartas*, "against Champerty, hindreth not the father from infeoffing "his son and heir. And the statute of Westminster II. "c. 11, which saith that, in appeals, it shall be inquired "who be abettors, extendeth not to the son that abetteth "his mother.'" *Treatise of Acts of Parliament*, c. 5, pp. 31-51.

Page 640, 12 lines from the bottom, restore a passage omitted: 'The statutes relating to Gaming and to Usury,' were said by the same learned Judge, "to be very apposite. "Their provisions are similar." And see upon this head, *Roberts v. Goff*, cited, p. 855.

Page 656. To penal statutes by intendment, add: "Statutes penal," says Sir Christopher Hatton, "may be "extended by equity, to the propagation of a good law "supplying a defect in the execution of justice: as may "appear by Stat. Rich. II. against the Warden of the "Fleet, for suffering any prisoner there, being by judgment "at the suit of any party, to go out of prison, without "agreeing with the party; which is worthily extended to "all sheriffs or gaolers, or keepers of prisons: for though "this act be penal, yet there is so great expediency in the "enlarging thereof, that all men allow it" (a); which states the law truly, but gives an invalid reason for it.

Page 762, 5 lines from the bottom, for Henry VIII. read: Henry VII.

Page 854, reference (a), for Haggard's Rep. 7, read 2.

(a) *Treatise of Acts, &c., Chapter vi. p. 67.*

A GENERAL

TREATISE ON STATUTES,

&c. &c.

CHAPTER I.

Of Statutes in general—Their place in the Laws of England—Definition—Distinction from Ordinances, Patents, Charters—Their original Form and Ancient History.

STATUTES or Acts of Parliament, of which it is proposed to treat; "*ea quæ statuta sunt*" as King Ælfred, says in the conclusion to his laws, (a) "*ut observarentur*;" the statute, or enacted law, (perhaps the more correct expression,) these, compose that part of the laws of England, known by the description or denomination of "written laws," in contradistinction to the common law, which is unwritten, and depends on immemorial custom.

Statutes,
description
and classifica-
tion of.
Leges scriptæ.

Lawyers (b), indeed, with extreme precision, distinguish between statutes passed before the time of memory, and those made since (c). The time of legal memory has been ascertained in conformity with a provision made in the 3 Ed. 1, for settling the limitation in a writ of right; which was, by stat. Westm. 1, c. 39, fixed at the beginning of the

(a) Wilkins, 34. Lambard, 26.

(b) Hale's Hist. C. Law, 2, 3, 4.

(c) 1 Reeves' Hist. of Eng. Law,

215.

reign of Rich. 1 (a). The limitation in a writ of right has (b) been since, with great propriety, altered to sixty years; yet, from inadvertence, or owing to some cause not apparent, the former extremely remote period had been suffered to remain as the date of prescription and legal memory in all other cases, at the time of the publication of the first edition of this Treatise. But very shortly afterwards, on the 1st of August, 1832, by an Act passed 2 & 3 Wm. 4, c. 7, reciting that, “Whereas the expression ‘time
 “ ‘immemorial,’ or, ‘whereof the memory of man runneth
 “ ‘not to the contrary,’ is now, by the law of England, in
 “ many cases, considered to include and denote the whole
 “ period of time from the reign of King Richard I., whereby
 “ the title to matters that have been long enjoyed, is some-
 “ times defeated;” enactments were made, “to shorten the
 time of prescription in certain cases.” This measure was followed in the next year (3 & 4 Wm. 4, c. 27,) by an Act “for the limitation of actions and suits relating to real
 “ property and for simplifying the remedies for trying the
 “ rights thereto.” But, as regards the earliest statutes, their classification and authority, the doctrine appears unchanged.

*Leges non
scriptæ.*

Those statutes then, which were made before the time of memory, and have not since been repealed or altered by contrary usage, or subsequent Acts of Parliament, are considered by professional writers as a part of the *leges non scriptæ*. They are, as it were, incorporated into, and become a part of, the common law; and notwithstanding copies of them may be found; their provisions, say these authors, obtain at this day, not as Acts of Parliament, but by immemorial usage and custom.* And of this kind according

(a) Or rather the time of his return from the Holy Land. See 2 Black. Com. in note, p. 31. The time of legal memory fixed by the Conqueror, was the beginning of the reign of Edward the Confessor. (*Palgrave*.) About 22 years, from 1044 to 1066.
 (b) By 32 Hen. 8, c. 2.

* “All statutes passed before the Conquest, or in the times of Wm. 1, Wm. 2, Hen. 1, Steph. and Hen. 2, and found in records or histories; these ought not to be reputed as Acts of Parliament.”—Hist. C. L. 3. For a curious and interesting account of the places and collections in

to Sir Matthew Hale, is (a) a very great portion of what we now receive for the common law.

The definition of statutes, as it is to be collected from a (b) case of great authority, is as follows: "Such acts as are made by the King's Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in Parliament assembled."

Definition of statutes.

The accuracy of this description of statutes, and the propriety of their classification as written laws, will be illustrated by a reference to the doctrines of Sir Matthew Hale. "*Leges scriptæ*, or written laws," (c) says that distinguished writer, "are such as are usually called statute laws, or Acts of Parliament, which are originally reduced into writing before they are enacted, or receive any binding power; every such law being in the first instance formally drawn up in writing, and made as it were a *tripartite indenture*, between the King, the Lords, and the Commons;* for without the concurrent consent of all those three parts of the Legislature, no such law is, or can be made." "*Sans tous troys, (come si soit fait par Roy et Seigneurs, mes rien parle del Commons,) n'est Ascun Act de Parliament*" (d).

The distinction between statutes and ordinances (with which they were, in unsettled times, frequently confounded), is, that the latter want the consent of some (one or more) of the constituent parts of a Parliament. These are, the King, Lords, and Commons. "Parts (e) of which, each is so necessary, that the consent of all three is required to

Distinction from ordinances.

(a) Hist. C. Law, 4.

(b) Prince's case, 8 Rep. 20.

(c) Hale's Hist. C. Law, 2.

(d) Finch's Nemotechnia, lib. 2, c. 1. fo. 121.

(e) 1 Black. Com. 190.

which copies have been found, consult the Appendix to the First Report of the Record Commissioners.

* This is legal pedantry: mark the diversity, when parliament men or publicists are the speakers. The necessary parts of a Parliament, or, as it is questionably expressed, "the states of the realm," are irreverently compared to "a Trinity," by the Commons, in 2 Hen. 4.—*Rot. Parl. vol. 3, p. 459.* And "profounder still in mystical absurdity," says the author of *Les Parliamentaria*, "some spiritualizing heads derive both the doctrine of the Trinity and the three estates of Parliament, from that uneffated speech, 'Let us make man, &c.'"

“make any new law that shall bind the subject. Whatever is enacted for law by one, or by two only of the three, is no statute.” But though no statute, this is the exact description of an ordinance, which, as Sir Edward Coke (*a*) expresses it,—“wanteth the threefold consent, and is ordained by only one or two of them.”

It must not be concealed that this view of the subject has met with much angry opposition. Because, from an abuse of language, the term ordinance has, in former times, been often improperly applied to Acts of Parliament, a learned, laborious, sometimes judicious, but oftener inconsistent antiquary, Mr. Prynne (*b*), has broadly contended, that statutes and ordinances are exactly and universally the same. And yet, the Acts of Parliament passed in the reign of Charles I, without the Royal assent, were, as if in confirmation of the former opinion,* and on the precise ground of this contested difference, denominated Ordinances. So again, because in many instances, where the Commons are not named, the fact of their assent may reasonably be presumed;—in others, where the mention occurs of King, or King and Lords,—the effect of this expression of some, as an exclusion of others, may be often doubtful; other writers (*c*) full of misplaced indignation, have attacked the conclusions of Lord Coke, and unadvisedly called in question the solidity of this distinction.

Regarding, however, the doctrine before laid down (from Lord Coke) as perfectly sound, and wholly unshaken, either

(*a*) 4 Inst. 24.

(*b*) In his *Irenarches Redivivus*; and again, *Animadversions* on the 4th Inst. 13.

(*c*) Hawkins. So Ruffhead. Prefaces to editions of Stat. at Large.

* Accordingly Cleveland, a royalist writer and partisan, describes an ordinance to be “a law still-born, dropt before quickened by the royal assent. ’Tis one of the Parliament’s by-blows, acts only being legitimate: and hath no more sire than a Spanish gennet, that is begotten by the wind. Yet law it is, (*i. e.* is contended to be,) if they vote it in defiance to their fundamentals; like the old sexton, who swore that his clock went true, whatever the sun said to the contrary.”

by instances of laxity of expression * and inattention to language, with which all ages abound; or by reasonings, which only go to restrain, and qualify the rule, or at best to show it liable to exceptions, and not to invalidate and destroy it altogether; it is still advisable to adopt the maxim with certain limitations.

In the consideration then of ancient statutes, it must not be hastily concluded, that they want the binding force of Acts of Parliament, because the King, or the King and the Lords, are named without the Commons:

Commons not always named in statutes.

1st. Because of the *general presumption* in favour of the assent of the Commons: which arises from the fact of most measures having undoubtedly originated with their petitions; and which is strengthened after the period when their right of assent was expressly and legislatively admitted.† And what, in considering the justness of such inference, is far from being unimportant, is the fact in Parliamentary history, that when in the latter end of the reign of Hen. 6, or beginning of Ed. 4, statutes were first drawn in the present form,‡ a title used to be invariably prefixed, importing, in the terms of it, a perpetual remembrance of the ancient mode of presenting a petition by the Commons; but which title is now disused (a).

Their consent implied, why.
1. From general presumption

and ancient prefixed title.

2ndly. From the *special presumption* which may arise in the particular case. To take an example—the 8 Hen. 6, c. 29, has been sometimes questioned as a Statute, on the ground

2. From special presumption.

(a) 2 Par. Hist. 280. 4 Inst. 11. 4 Reeves' Hist. E. Law, 111.

* This is the line of argument taken by Prynne, who cites above a hundred instances of the words being used as he contends indifferently, or coupled together as synonymous terms: and he lays great stress on the word "*ordinari*" occurring in the following manner in the writ for electing knights, citizens, and burgesses to Parliament: "*ad faciendum et consentiendum hijs, quæ de communi consilio regni nostri contingerint ordinari.*"

† It was so admitted in 1 Hen. 4, and thus explicitly: "It was answered in the name of the King, that all judgments belonged to the King and Lords, unless in statutes or the like." At the same time, be it observed, negating the unfounded claim of the Commons to a share in the judicature.

‡ In these words, "*Item quædam petitio exhibita fuit in hoc parlamento, formam actûs in se continens.*"

that the King and the Lords only are named in it, without the Commons (*a*). Here, it has been observed, 1st, that the roll containing the 8 Hen. 6, has a general preface, which mentions the assent of the Commons in terms sufficiently large, to comprehend all the chapters of that year; 2ndly, that the stat. 22 Hen. 8, c. 10, expressly refers to the 8 Hen. 6 (*b*). This is a case of general assent and legislative recognition. It must be obvious that there may arise other instances of implied assent; and that these may be more or less corroborated by facts and circumstances. Such circumstances are, *inter alia*; the act appearing to have been done "at the request of the Commons," or "on the complaint of the Commons," or "in consequence of their petitions;" or "*in pleno Parlamento*;" as, for example, the judgment given in Pagnall's case,—"*super hâc recitatâ petitione, coram ipso Domino rege et consilio in pleno Parlamento*." (*c*). So Segrave's case, *Rot. Parl.* 50 Ed. 3. n. 27, where the commons were accusers, and, therefore, though "present at the answer," not parties to it.

3. From facts.

3rdly. Because of the *fact* of the allowed force of several statutes in which the King only is named, (as those passed (*d*) *ad petitionem cleri*); and the long reception of others, which mention the King and Lords, without the Commons; as the statute of Merton (*e*). Neither, it seems apposite to remark, (though such anomalies establish little except the irregular proceedings of those times), is an instance wanting, of an Act of Parliament passed by the King and Commons alone, without the Lords (*f*) viz. 1 Ed. 6, c. 5; and that twice approved, viz. by 1 Eliz. c. 7, and 5 Eliz. c. 19 (*g*), both of which allow and commend this act.

4. From entries.

4thly. From the nature of the entries; Sir Matthew

(*a*) Co. Litt. 159, *b*. and see Hargrave and Butler's notes. Dyer, 144, *b*.

(*b*) Hawkins and Ruffhead. Prefaces to Stat. at Large.

(*c*) Hale's Jurisdiction of Lords, 18.

(*d*) 9 Ed. 2. 12 Ed. 2. Madox's

MSS. Brit. Museum.

(*e*) Hawkins. Pref. to Stat. at Large.

(*f*) Barrington's Observations on the Statutes, chiefly the more ancient.

(*g*) Comm. Journ. vol. 9, 235.

Hale justly observing that the styles of the *consilium regis ordinarium*; of the Great Court of Parliament, consisting of King, Lords, and Commons; and of the Lords' House; are so variously and promiscuously used, as to cause great difficulty in determining whether proceedings belong to one or the other. Thus—"styles, that in propriety, take not in "the whole Parliament but are in propriety applicable to "the King alone, or to the King and his *consilium ordinarium*, are applied to acts or grants in Parliament, made by "the King and both Houses, and true Acts of Parliament." "So, in truth are applied, many styles and titlings, that in "propriety are not so applicable to the whole Parliament; "yet were the businesses transacted and assented to by the "whole Parliament" (a).

The rule, then, must be taken with this qualification; that to make a binding statute there must be the consent of each of the constituent parts of a Parliament; but that the consent of the Commons, (or Lords), which, in early times, is not always expressed, may, from circumstances, often fitly be presumed.

Ordinances, again, opposed to statutes, will perhaps be found, on inquiry, to include, *in general*, patents and charters, and to indicate, in early times, those legislative acts or edicts of the King, in his court, or assisted by his council, (*consilium regis ordinarium*), or in cases of importance, by his great council, (*magnum consilium*) (b), which were either declaratory of the old law, or directory to his justices, in what manner to proceed in particular cases. The author of the "Mirror," indeed, complains that ordinances were only made by the King and his clerks, and by aliens and others who dare not contradict him (c).

Ordinances include in general, patents and charters.

Ordinances are said to include patents and charters in general, because there *are* certain cases, where, in the form of a charter, or by way of a grant from the King, laws have

Some charters and grants, undoubted laws.

(a) Hale's Juris. of Lords, 20.

(c) Mirror, c. 5. Edw. 2, reg-

(b) 3 Reeves' Hist. Eng. Law, nante.

been made, which have always enjoyed the reputation of Acts of Parliament, and are therefore now received and regarded as such, by intendment of law. Again (a), there are instances, where the King has made grants "*per consilium fidelium subjectorum*;" or expressed as follows, "*de consilio Prelatorum, Comitum, Baronum, et aliorum de regno nostro statuimus.*" So, the statutes passed *ad petitionem cleri*, (b) and immediately answered by the King, and "assented and "accorded to" by both Houses, were digested into laws in the form of a charter, and entered on the statute roll. Here, the consent of the other branches of the Legislature being plainly expressed, (it matters not in what form), *these* are Acts of Parliament.

First laws :
Dooms of
Ethelbert.

The first specimens of Anglo-Saxon legislation are the "Dooms," which Ethelbert, king of Kent, "established with "the consent of his Witan," in the days of Saint Augustine. They are written in English, as the dialect is termed by Bede; meaning Anglo-Saxon.*

Old names of
laws.

In the times chiefly referred to, (later than the Heptarchy, but anterior to the date of the earliest statutes now extant), the general name for all laws, was *Asisæ*, or sometimes *Constitutiones*, of which the *Assisæ* and Forest Laws of Henry 2, and the Constitutions of Clarendon respectively, furnish an example (c). The enacting power was always expressed as subsisting in the King, (*rex præcepit vel consti-*

The King the
maker.

(a) Prince's Case. 8 Rep. 20.
(b) Hale's Juris. of Lords, 20.

(c) Hoveden and Mw. Paris.

* Indeed, under the Normans,—that plainest mark of the total subjugation of a people, a change in the language of the law, was never, completely effected in England. "The fader to the bough,—and the "son to the plough;" and the forest distich: "dog draw, stable "stand; back berend and bloody hand!" are known to have preserved in certain native, traditional expressions, the old unchanged maxims of the Anglo-Saxon law. In like manner, the Roman Catholic priests, were never able completely to banish the mother-tongue from their most sacred services: "Even the mass was not read entirely in the "Latin tongue. The wedding form was in Anglo-Saxon; and its "heartly racy, sound,—and simple, sterling substance, are preserved in "the English ritual to the present day." ("For better, for worser;" "for richer, for poorer," &c.) Remarked in *Lappenberg's History of England under the Anglo-Saxon Kings*, translated by Thorpe; and see *Palgrave's History*, vol. 1, chap. 1.

tuit), and the ideas entertained of legislation were confused and crude in the extreme.*

* Yet, in contemplating the Saxon economy, it is impossible not to admire the exquisitely nice connexion and dependence of parts, and the consequent regularity and harmony of the whole, *in theory and on paper*. The court barons or manor courts,—the hundred courts or wapentakes,—the folkmotes, shire-motes, or county assemblies, were as much deliberative bodies within their respective precincts and jurisdictions, as the witan-a-gemot or general parliament was for the whole kingdom. Thus, in ordinary cases, there was no occasion to apply to the superior Parliament, while the inferior convention could, and usually did, provide a remedy. The courts of manors and tithings always ended before the wapentakes began; these hundred courts finished before the folkmotes commenced; the county courts ended just before the witan-a-gemot assembled: so that there lay an easy transition, by appeal, from the inferior to the next superior court, and lastly, to the *conventio magnatum*, or supreme assembly; which was a high Court of justice, held for the redress of wrongs and punishment of great delinquents, quite as much as for the purposes of legislation. All these courts were held twice yearly, for the election of magistrates, and distribution of justice, within these respective precincts.

The election of their rulers and governors,—the heretochs, or *duces*, who headed the people in war,—the ealdorman, earl or lord of a county,—the greater thane, or lord of a hundred,—the sheriffs and conservators of the peace, coroners, and verderers,—took place *in pleno folkmote* about the end of September; so that all was over before the meeting of the witan-a-gemot in October. Considered as a police system, and under a vigorous government, this scheme may have been effectual. At the same time, it is doubtful whether divisions so minute and multiplied, are suitable to any, except the very earliest and rudest conditions of society. The grand juries, quarter sessions, and occasional county meetings, now better answer the same end. The choice of their own responsible rulers was certainly a grand principle, both indicative and conservative of freedom. “These were mighty powers and freedoms,” says Sir Robert Atkyns, “and were enjoyed by the people as anciently as any of our records do reach, which are more authentic proofs of our constitution, than the writings of modern historians; and do best prove the native freedom which the people had, and that the privileges and freedoms we yet enjoy, are not mere emanations of royal favour,” &c.

The substitution of justices for conservators of the peace, who were chosen by the people, but confirmed by the King, was effected in the minority of Edw. 3, by the Queen and Mortimer. Besides these civil officers, the Commons also, in very early times, elected the bishops, both here and in France; and Mezeray says, that to *this* election was applied the saying, *Vox populi, vox Dei*. The magistrates and governors thus elected by the people in full county Court, in one sense certainly represented in the witan-a-gemot, the freeholders by whom they were chosen, though they were summoned as *magnates*; but thither were also admitted theynes or landholders, *milites* or *cnihts*, who were not nobles, and at a later period if not always, the *seniores* and *sapientiores populi*, who, like the *maiores* sometimes mentioned, were probably

In an early stage of civil society, when laws are few and defective, and the execution of them feeble and precarious,

the sheriffs of counties, and mayors and bailiffs of towns and cities.—*Wilkins—Lambard—Spelman Glos.—Lex Parl.*

The "maer" was a Saxon magistrate, exercising authority over the burgh villeins; as the "gerefa," reeve or sheriff, was the efficient ruler of the ceorls or villagers (*Palgrave*). Sharon Turner, who has examined the subject with great attention in his excellent history of the Anglo-Saxons, entertains no doubt that the *milites, cnihts*, always found in the *witan-a-gemot*, were knights of the shire, immemorially elected before the Norman conquest. And he further holds, that the privilege of electing citizens and burgesses to the witan, (though the members sent, were at first, theynes or landholders residing within the burghs, and not commercial men; till, with the growth of trade, wealth increased, and merchants obtained an effective rank); was, like the county representation, also immemorial, since it is clearly ascertained that some untitled persons always expressed their assent to the determinations of the witan. That the thanes of the Danish burghs were members of the *witan-a-gemot*, *Palgrave* says, is indisputably proved; and it is most probable that the ealdorman who ruled the burgh, possessed the same rights as the ealdorman who presided in the shire.

If the municipal authorities could not conveniently attend in person, they naturally sent, first, deputies, and then, delegates; but, for what purpose, and in what character did they attend? *Palgrave* says, the *michelgetheht* (great thought), or *witan-a-gemot* (meeting of wise men), consisted of the king, the dignified clergy, the eorls or ealdormen, and the thanes or landholders, (probably including the *cnihts*), and represented the whole realm. Besides these, it is ascertained that the Chancellor (the arch-chaplain, dean, or keeper of the king's conscience), and the clerks of the council, (Masters in Chancery) sat therein, and had great and still increasing weight in the deliberations.

The reeve and town good men attended, with the priest, from every upland or township, to give information as to local facts, to carry in petitions, and to make presentments of grievances; as at a later period, under the Norman dynasty, four good and discreet knights of the shire, were ordered to bring up the inquests taken under the commission of the peace. Both of these were virtual representatives, who, upon their oaths presented, or made known, the grievances of the people. *Palgrave's* theory, is, that this attendance upon Parliament as a high Court of justice, to represent grievances, which he terms "remedial representation;" gradually merged in political representation: in which he is, to some extent, probably right; but the cause is inadequate to the effect, if taken singly and *per se*, to account for the introduction of popular representation, and applying equally to the knights of the shire, (*milites*, constantly found in the witan) and to the citizens and burgesses.

Sharon Turner's conclusion is, that the *witan-a-gemot* very much resembled our present Parliament in the orders and persons that composed it, and that the members who attended as representatives, were chosen by classes analogous to those who till recently, possessed the elective franchise, viz.: freeholders in counties, and freemen in towns.

much must necessarily (a) be left to the authority of the sovereign power. In occasional or doubtful cases, it was requisite, and under the circumstances certainly beneficial, that the King, with the assistance, and in some degree the control of his council, should not only administer and interpret, but also declare, explain, apply, and perhaps even *adapt*, the existing remedy. Accordingly, all petitions were directed to the King himself, or to the King's council, or to the King and his council. This council of the King consisted of privy counsellors, ministers of state, the judges, and Attorney-general, and when called together upon matters of importance, *in pleno consilio*, included also the Master of the Rolls, the King's counsel who were King's serjeants, and other persons of great prudence and ability, who might be convened (b). This was the *consilium ordinarium* which is generally mentioned in Acts of Parliament, under the name of *consilium regis*, or *coram rege et consilio*.

With the advice of his council.

Consilium regis ordinarium, what.

But sometimes the prelates and lords, or such of them as were in attendance,* or at hand, were joined in delibera-

(a) 1 Reeves' Hist. Eng. Law, 215.

(b) Hale's Juris. of the Lords.

The common people indeed, bore no share in election or representation, because the great bulk of the population was then in a servile state, the absolute property of their respective lords, without any constitutional rights. But all freemen, had some share in legislation. If the socmen and freemen attended, not only to present petitions, but also to assent to grants of money, they would, instead of always exclaiming "Yes, Yes, Yes," from the bottom of the hall; (*Palgrave*), be, in time, emboldened to cry *No! No! No!* The Ayes would not always "have it."

Sir Robert Atkins arrives at the result, that Bede, Spelman, Selden, Camden and others, in their review of the Anglo-Saxon history, have sufficiently made out that the *seniores et sapientiores populi* were part of the witan, but that it is not proved, that they were elected, or consisted of knights, citizens, and burgesses. And it certainly is impossible (were it at all important), now to ascertain, with any degree of precision, of whom the inferior members of such supreme assembly were composed, or in what manner delegated.

* At Verneuil, in 1176, a mixed assembly of English and French enacted laws for both countries: some English barons, in all probability, being over on service with the King in France. At Northampton, in 1165, several Norman barons voted, and no notice was taken of this proceeding as an irregularity. And little marvel, as in the great

Magnum consilium, what.

tion with the *consilium ordinarium*, and then it was called *magnum consilium*. Sometimes, too, the knights and citizens were called in to the *magnum consilium*, when it was held ancillary to, or in preparation for, a Parliament. But it may be usefully remarked, that writs of summons to great councils never ran *ad faciendum* (to enact), but *ad tractandum, consulendum et consentiendum* only (a). The use of the term *magnum consilium*, however, is very indiscriminate. Sometimes it means only the Upper House (the Lords' House in Parliament); sometimes the Lords' House joined with the *consilium ordinarium*, and sometimes the whole body of the Parliament (b).

Commune consilium, what.

Commune consilium always imports both Houses of Parliament. But anciently, as has been stated, all petitions were directed to the King, or *al roy et son conseil*, or *al conseil le roy*, till the middle of the reign of Rich. 2, when the same were directed, "*al roy et al noble seigneurs assembles en Parliament*;" which latter title became ordinary and habitual in the time of Hen. 4, and so downward.

To return, however, to the earlier periods of our juridical history. It was soon felt to be too much that the King should make, or even alter laws, of his own mere pleasure, and to suit his private purposes (c). This would indeed be first disputed in the case of such alterations as affected the persons or property of the barons. Accordingly, there seems reason to believe, that, originally, the business of providing, as well as of declaring laws, was principally left in the hands of the King, unless in instances where the Lords or Commons felt an interest in promoting a law, or the King anticipated an advantage in procuring their concurrence (d). Upon such occasions, a *commune consilium* was summoned, the advice of the *magnates* required, and

When new laws required, the *magnates*

(a) Prynne's Register.

(b) Hale's Juris. of the Lords.

(c) 1 Reeves' Hist. Eng. Law,

85.

(d) Ibid. 217.

councils of the Conqueror, Anglo-Saxon Earls sat by the side of Norman *Comites*: and the Earls' wives have ever since preserved the title of Countesses.

the law expressed to have been passed "with their consent," or "at their request and prayer." Not that in this country (as Fortescue hath nobly testified, and in a work addressed to a prince), (a) the mere arbitrary will of the monarch ever constituted the law; but, what need not create much surprise, the limits of the executive and legislative authority were not in any, the slightest degree, defined or understood.

convoked to
consult on the
necessary pro-
visions.

Thus, it will be seen that the right of general legislation was placed in the King with the advice of his Great Council. So little opposition was found in these assemblies by the Norman kings, that they were fortunately led to gratify their own love of pomp, as well as the pride of the barons, by consulting them in every important business (b). But the limits of the legislative power were extremely indefinite. In the Great Council, or Parliament, (the student will remember that they are not properly synonymous), a general scheme of future laws,—the principle, perhaps, in part, the plan, on which they were to be afterwards framed, was indistinctly laid down; the rest was left to the Executive to complete, and even to vary, in the manner *it* found expedient. To these modifications the consent of the other branches of the Legislature was virtual, tacit, implied;* in the other case, (when they assembled), it was real, explicit, and express.

Such legislative acts as the King assumed to perform himself, without calling in the assistance of his Great Council (and which must have been supposed to be only a furtherance of justice, in conformity with established law,

Occasional
conventions or
councils,

(a) Fortescue *De laudibus legum Angliæ*, c. 34, 35, 36. "The statutes of England, are not from the will of the Prince, but by the assent of the whole kingdom; nor can the King by himself, or his

"ministers, impose talliages or subsidies, or any other burdens, upon his liege people."

(b) Hallam's *View of the State of Europe during the Middle Ages*, vol. ii. c. 8.

* "It will not seem absurd," says the ancient Glanville, who wrote in the reign of Henry 2, "That those English laws should be entitled 'Laws (as opposed to customs), although not written, which have been promulgated on doubtful things, and in council determined by the advice of the *proceres*, and acceding authority of the prince.'—*Glanville Prologus*."

which established ordinances.

and such resolutions of the Great Council (composed upon important occasions, not only of those who were regularly summoned to the House of Lords, but of deputies from counties, cities and boroughs, and therefore hardly distinguishable from Parliament, except in name), as established temporary or partial regulations, however confounded in common parlance, or by the vulgar and indiscriminate use of terms, were, in legal apprehension, quite distinct from Acts of Parliament or statutes of the realm. Such were properly ordinances (*a*): appointments proceeding from the King, or the King and the Lords, without the concurrence of the Commons; or, where they occasionally denote the act of the whole assembly, being then determinations of conventions or councils, and not Acts of Parliament (*b*). A remarkable instance occurs in the Great Council held 27 Ed. 3, which consisted of one knight from each county, and of deputies from all the cities and boroughs; and at which the ordinances of the staple were established (*c*). In the last petition of that Council the Commons pray—
 “because many articles touching the state of the King and
 “common profit of his kingdom, have been agreed by him,
 “the Prelates, Lords and Commons of his land at this
 “Council, that the said articles may be recited at the next
 “Parliament, and entered upon the Roll, for this cause;—
 “*that ordinances and agreements made in Council are not of*
 “*record, as if they had been made in a general Parliament*” (*d*).
 This accordingly was done at the ensuing Parliament, when these ordinances were expressly confirmed and directed to be “holden for a statute to endure always.” Sir Matthew Hale, speaking of this transaction, says: “But this *magnum consilium* had nothing of legislative power and jurisdiction,
 “and therefore they were afterwards enacted, to supply the
 “defect of a law.”

Revival of by Charles I.

In 1640, when successive Parliaments had refused to

(*a*) 3 Reeves' Hist. Eng. Law, 146.

(*b*) *i. e.* of the *magnum consilium*, and not of the *commune consilium*.

(*c*) Hallam's Middle Ages, vol. ii. c. 8.

(*d*) Rot. Parl. 253. 257.

grant supplies without redress of grievances, Charles 1 was persuaded by his worst of bad advisers, Lord Keeper Finch, to summon a Great Council of Peers. This was just the advice to be relished; and Writs of Summons were accordingly issued under the Great Seal to all Peers requiring them to meet at York, and consult with the King *de arduis regni*. Lord Clarendon, *pace tanti viri*, is inaccurate in saying that "this assembling of the Peers, was a new invention, not before heard of;" but he is warranted, when he adds; "or, so old, that it had not been practised in England for some hundreds of years:" that is, never since the time, when the concurrence of the Commons as a constituent part of the Legislature, had been fully established. This attempt to supersede the House of Commons, like other unconstitutional acts of that misguided Prince, recoiled heavily upon himself. But when Lord Keeper Finch laid down in his address to the Parliament, that "such measures had been used to be taken formerly, as preparatory to a Parliament;" referring to the remote and unsettled times now under consideration, Finch was not incorrect in the letter. Therefore the contemporaries of Camden* and Selden, do not deserve the concern and pity expressed for them by a † noble and learned historian, for not possessing the antiquarian and constitutional lore, which would have enabled them to controvert the Lord Keeper's *dictum*; though they might have well observed upon its stupid pedantry,—as fully equalling its folly and mischief.

* Called by Lappenberg "that unrivalled antiquary, William Camden."

† Lord Campbell: *Lives of the Chancellors:—Lord Keeper Finch*, 2 vol. p. 575. Finch said of the Council at York: "This was not done to prevent, but to prepare for a Parliament, after a custom which had been frequently used." Upon which, Lord Campbell observes complacently: "Although Camden and Selden flourished about this time, it is certain that the general mass of intelligent persons were by no means so well acquainted with the history and antiquities of the country as at the present day, or the Lord Keeper durst not have ventured on such an assertion." Now the observation, Lord Campbell will excuse me saying, was well founded in parliamentary history, though the adoption of the antiquated course of proceeding, was absurd, ill designed and mischievous.

Patents.

Of the same nature as Ordinances, and of equal force and validity as declaratory of the old law, but never regarded as introductive of a new, were the Patents, which were sometimes delivered to the knights of shires, with a recommendation to publish them in their respective counties.

Charters.

From an adherence to the same rule, Charters, (a very common way of making or acknowledging laws in the earlier times), in which the King is considered as a party granting, were ranked, not with statutes, but with ordinances; though these are rather to be regarded in the light of concords or compacts between the parties interested, and were passed and executed with the ceremonies suitable to such a transaction; as the Charter of John, founded on the *capitula* of the barons, and to which the barons of the realm were parties, *signing and sealing it*.

Statutes how made :

founded on petitions.

Petitiones communitalis.

Acts, or Statutes, were of a more solemn and public nature. They were founded, as will hereafter appear upon petitions of the Commons, referred to certain tryers, being Lords of Parliament, and afterwards maturely considered and replied to by the King, with the deliberate assistance of his responsible advisers. The statute itself, as will be also shown, was drawn up with the aid of the judges and other grave and learned persons, and was entered on a roll called the Statute Roll. The tenor of it was afterwards transcribed into parchment, and annexed to a proclamation *—writ, directed to the sheriff of every county in England, and commandment given him, that he should not only proclaim it through his whole bailiwick (a), but see that it was firmly observed—and kept. And the usage was, to proclaim it at his county court, and there to keep the transcript, that whoso would, might read or take a copy of it.

(a) 4 Inst. 11.

* Some of the original writs requiring the proclamation and publication of statutes, and sometimes also directing "copies to be made and distributed, and the sheriffs to return what was done by them thereupon," are preserved in the Tower of London.

Printed promulgations of the statutes, in the form of sessional publications, began in 1 Rich. 3. See *Appendix to First Report of the Record Commissioners*.

Ordinances, likewise, the King sometimes recommended the Commons to publish in their counties, and upon such occasions the form used was a charter or a patent.

When a declaration of some point, was prayed by petition (a), it was the business of those to whom it was referred, to consider whether the matter prayed could be complied with consistently with the existing law; or whether it would be new and inconsistent with it,—for in the former case, an answer, accompanied with some instrument to testify it, would of itself be sufficient to warrant it; in the latter, there must be an express statute. It is in this way, *reddendo singula singulis*, that the words of the statute, 15 Ed. 3, c. 7, are to be understood—"That the petitions shown by the great men and the Commons, be affirmed, according as they were granted by the King; that is to say, some by statute, and the others by charters or patents." In the 21 Ed. 3, it was prayed by the Commons, "that a plaintiff in debt or trespass might have execution of the land which the defendant had, the day of the writ, purchased." Answered, "that it could not be done without a statute;" being new and at variance with the existing law.*

Petitions granted according to prayer; for authentic declaration of existing law; or, for providing a new law.

Ordinances (including patents and charters), had no other sanction than the Parliament Roll; they were never entered on the Statute Roll; they were never proclaimed by the sheriff. An ordinance might be altered by a statute; a statute could not be altered by an ordinance†. A statute

(a) Reeve's Hist. Eng. Law.

* "If the petition and answer were not only of a *public*, but of a *novel* nature, they were then formed into an Act by the King, with the aid of his council and judges, and entered on the *statute* roll." See *Report from the Parliamentary Committee, upon temporary Laws expired and expiring*. Here we have a sound distinction justly taken, and the difference further and strongly marked by the discriminating circumstance of the roll of entry. Unfortunately, there afterwards occur some occasional passages in the same valuable Report, which serve to countenance, in some slight degree, the notion of Prynne, so completely unfounded, (however sanctioned by great names,) of the identity of statutes and ordinances.

† The latest writer who has treated this subject, among others, with great learning and ability, is Mr. Hallam, who in his luminous and masterly chapter on the English constitution, in the "View of the

was an ordinance and something more ; it requires all the authority of Prynne, who was deeply learned, though singularly obtuse, to credit the converse of the proposition ever having been gravely stated.

In 2 Rich. 2, c. 6, in consequence of unusual riots and outrages, (which might almost seem to justify the measure), an Act passed, *not founded on a petition*, enabling magistrates, without waiting for a legal process, to commit the ringleaders of tumultuary assemblies till the next arrival of justices of gaol delivery. But the Commons next year petitioned against "this horrible grievous ordinance," "by which every person "in the kingdom would be in bondage to these justices;" not, in all probability, so much out of any love for riot,* which at that time wore a very alarming and forbidding aspect (*a*), as from resentment that they were no parties to the enactment, which was on that account, termed an ordinance.

A law not founded on a petition declared an ordinance.

Corollary.

A statute then is, whatever is enacted or declared for law with the consent, express or implied, of the three parts of which Parliament is properly composed. The distinction between lords spiritual and temporal, is now to be regarded as merely nominal: they are in reality, in Parliament at least, only one body: constituent parts of one Assembly; but still Sir Matthew Hale, a powerful, I had almost said, an insuperable authority (*b*), insists that the lords spiritual

(*a*) Wat Tyler's Insurrection. (*b*) Hale's Juris. of Lords.

"State of Europe during the Middle Ages," observes as follows: "It must be confessed that the distinction between ordinances and statutes is very obscure, and, perhaps, no precise and uniform principle can be laid down about it. But it sufficiently appears, that whatever provisions altered the common law, or any former statute, and were entered on the statute roll, transmitted to the sheriffs, and promulgated to the people, as general, obligatory enactments, were holden to require the positive assent of both houses of Parliament, duly and formally summoned."

* There is no doubt, at the same time, that the proceedings with regard to the followers of Tyler (and Cade), were frightfully irregular. Tresilyan made a sort of Jefferies campaign to try them, and committed horrible cruelties, according to Knighton; yet by an act, reciting that many of them *had* been executed without due process or trial, but that it had been only done to put a stop to their dangerous insurrections, the King grants a general pardon to be pleaded against any prosecutions.

and temporal are *two estates*,* though they constitute but *one house*.

* This is a disputed, and is, therefore, mentioned as a doubtful point;—the text inclining to what is apprehended to be at once the popular, the constitutional, and the legal doctrine upon the subject: viz. that the Lords, spiritual and temporal, in Parliament assembled, are now in reality only one order or *status*.—This is a position quite distinct from the question, whether the three estates of the realm are the King, the Lords, and the Commons, the Lords forming the second estate, which is rather sneeringly said by Hallam to be “the current opinion of Westminster Hall,” though Lord Coke, Hale, and Blackstone, hold the contrary. It may be true that, properly, “the King comes in by a higher denomination, and takes as head of the three estates of the realm.”—Hale. So, in strictness, the lower House of Parliament is not, perhaps, such an estate, but rather, “the image and representative of the Commons of England, who are.” But it is suspected to be the well-founded opinion of lawyers, and of legislators also, that *there are but three component parts of a Parliament*, and that, at present, the Lords spiritual and temporal forming together only one body, may be denominated, one estate, class, and condition of society: and this, notwithstanding the weighty sentence of Hale, and the learned arguments of Stillingfleet, Hody, and Warburton against the baronial tenure of Bishops, on which it mainly depends. The subject is unquestionably attended with many difficulties. The spiritual Lords, Bishops, and mitred Abbots, present at a debate, sometimes exceeded the number of the temporal lords; why then, did they not outvote them on church questions? unless they were regarded as a separate order in Parliament. Their silent influence in defeating the anti-church tendencies of the Commons in the reigns of Henry 4 and 5, and in interpolating provisions against the Lollards, among the statutes granted on the petitions of the Commons, can escape no careful reader of history. But how came they to be so silent, or to act so discreetly in the exercise of their influence?

It is proper that the student should be carefully informed, that, besides the weight of authority in its favour, it has been pretty conclusively shown, on documentary evidence and the analogy of other governments, that the three estates of the realm are, the Nobility, Clergy, and Commons: *tres status regni Angliæ rite et debite convocatos, videlicet per Prelatos et Clerum, Nobiles, et Communitatem ejusdem regni.* Rymer, t. 12, p. 508. So Hakewill (Ancient Customs of England, p. 12)—“the three estates of the kingdom consisteth of the Nobility, the Clergy, and the Commonalty.” But the word estate, when applied to the Commons in Parliament, is confessedly used in a secondary sense, and thus the dispute becomes (so far) merely verbal and somewhat frivolous. So, with respect to the King, we often hear of the “state royal.” “The King at no time stands so highly in his estate royal, as at the time of Parliament,” (See *Pet. Jus. Parl.* 6), and witness, *ante* (p. 2), the “states of the realm” compared to a Trinity; yet the expression is rarely, if ever, applied to the King or Commons, except in speaking of them as necessary parts of the Parliament, when it surely is elliptical, meaning, it is conceived, of the essences of a Parliament. “*L’Assemblée de Troys Estates, c’est ascavoir Roy, Nobility, et Commons, que font le corps del realm,*” &c. Finch’s Nemotechnia,

Origin of Parliaments.

It would be foreign to the plan, and exceed the scope of this work, to examine, *in extenso*, the origin of Parliaments,

lib. 2, c. 1, fo. 23. Most accurately in this respect "King James 1, in "the eighteenth year of his reign, declared that the Parliament consisted "of the Monarch and the two estates, Lords and Commons." (*Rushw. Collect.* 21).

To return to the Peers: there is a natural hesitation in admitting a separate estate in the spiritual Lords, since it was established that they sit only in respect of their temporal baronies, and are not an essential part of Parliament, whose voice must concur in any measure to render it effectual. Parliaments have been held *excluso clero*. There is no doubt of the validity of a bill, though every lord spiritual should vote against it, or decline voting at all, as was the case with the Act of Uniformity; so, though all the temporal lords should be absent. They are now blended under one name of Lords, sit in one house, and intermix in voting. "After the Conquest, the Conqueror altered the tenure of "the Bishoprics, not without some complaint and grief of the Clergy, "as is mentioned in *M. Paris*, an. 1070." (Their grief had this reason: the measure subjected their estates to all civil charges and assessments from which (except the *trinoda necessitas*), they were before exempt. Subsequently, the constitutions of Clarendon operating *in invitum*, compelled the Bishops and Abbots to attend Parliaments, and Great Councils. Their struggle was to sit apart, and to continue to be regarded as a distinct order, exempt from all civil charges and burthens, but the endeavour was unsuccessful.

Why, then, are the Clergy sitting in the Upper House *ratione tenure* merely, and in the Lower House at present by representation, to be any longer considered a separate estate from the people at large? And, if not the Clergy in general; *a fortiori*, why is *a part*,—why are the Bishops,—who are not even the representatives of the Clergy, to be so considered?

In the days of usurpation and encroachment indeed, if we recur to them, the Clergy would fain have been regarded, not only as a separate estate, but as capable, with the consent of the King, of *making binding laws*; and, accordingly, we find answers immediately given to their petitions, without express mention of the consent of the two Houses. But the Commons grew timely jealous of these proceedings, and remonstrated warmly. The King admitted their representations (18 Ed. 3, c. 8), and the assent of the Parliament to the clergy's petitions was always required. In his grandson's reign, the Clergy interfered with the King, and remonstrated against his extending the power of Justices of the Peace. The King indignantly replied, he should do it if he thought proper, without heeding their protestations.

It ought, however, in fairness, to be observed, that in later times, instead of usurping rights which did not belong to them, the Clergy have been deprived of privileges to which they were justly entitled. By a monstrous inconsistency, Bishops are not triable, on charges of treason or felony, by the temporal peers, but by a common jury. But, strange as this is, it is an anomaly not more capricious and unaccountable than the practice of trying Peers for misdemeanors in the same way. Barrington observes, that, "surely the words *nullus liber "homo capiatur aut imprisonetur aut aliquo alio modo destruatur nisi per "legale iudicium parium suorum* seem to have been anxiously intended "to include every kind of criminal prosecution. It was the law of

and their constitution, prior to the 9 Hen. 3, the date of the earliest statute extant in our printed books. Not, it may shortly be observed, that there can be any doubt that such institutions,* in some shape or other, however rude, and by whatever names distinguished, (whether as Parliaments, Cortes, Diets, or States General) (a), universally prevailed in all nations of Teutonic original;† but under various modifications, adapted to the particular circumstances of the respective states ‡.

(a) Cæsar *de bell. Gall.* lib. 4. Lamb. *Arch.-Wilk. L. A. Sax.* 14.
Tacitus *de Mor. Germ.* c. 11. Robertson's *Hist. Char.* 5.

"every part of Europe; '*Les nobles estoient jugés par leur paires et les bourgeois par autres bourgeois et prud-hommes;*'" and he adds truly, "that the prejudices of a common jury are more likely to operate on a misdemeanor, than in a capital offence."—p. 368, citing *Thaumasier sur les Assises de Jerusalem and Beaumanoir*.

* "A great council of advice and assent in matters of legislation or national importance was essential to all Northern governments."—*Hallam's Mid. Ages*, vol. ii. c. 8. The author of *Lex Parliamentaria* records (p. 12) an amusing mistake of the learned Camden; who, translating the British words *Chyd Synniedigaeth*, renders them *Chorea Gigantum*, instead of *Conventio Magnatum*.—"There were giants in those days."

† "On verra que c'est des Germans que les Anglois ont tiré l'idée de leur gouvernement politique. Ce beau système a été trouvé dans les bois." Montesq. *de l'Esprit des Lois*, lib. xi. ch. 6. Palgrave says; "without pretending to determine the exact extent of the influence of Roman policy, we must emerge from the forests of Germany in seeking the origin of the English constitution." Allen, in his profound and elaborate inquiry into the "rise and progress of the royal prerogative," has incontestably shown, that much of our monarchical theory is drawn from the Empire. Every monarchy of Europe agrees in the theory which assumes that the people are petitioners in the supreme legislative assembly,—that the peers are the councillors, and the King, the maker of the law. But this was not the original constitution of the free Teutonic councils, held on the hill tops; (thence coming to be termed "Laws.") This was not the position,—these were not the functions of the Anglo-Saxon Cyning, himself an elected and limited ruler,—and governing a people whose executive officers were all their own free choice. See *post*, King and kingly office, ch. ii.

‡ In our own country the probable conjecture certainly is, that, apart from their voluntary attendance to petition for redress of grievances, it was only in matters of aids and taxes, that the people were required to depute to the National Councils some of the weightiest and discreetest persons of their body, ealdormen, and "ancients in days," who might or might not, possess municipal authority. "The Commons attended in extraordinary cases, as in granting new aids and taxes, as Danegelt," &c.—*Spelman Gloss*,

General Councils held under the Heptarchy or Bretwalda-ship.

In England, general councils of the realm, under different titles, as *witen-a-gemot*, or meeting of wise men; *commune consilium regis*; *conventus magnatum vel procerum*; *assisa generalis*; *communitas regni Angliæ*; *discretio totius regni*, &c. (a) appear to have been frequently held, as the affairs

(a) 1 Parl. Hist. 2.

verb. *subsidium*. With which Maddox agrees (c. 7, 8, 9), and gives a full account of those aids and taxes, which then, he says, were but seldom raised, the King being abundantly supplied by his ancient demesne lands (consisting, at one time that can be ascertained, of 1422 manors [see *Lyttleton's Henry 2*, vol. ii, p. 228]; while Henry 3 was immediate lord of 49 towns in Yorkshire, and a proportionate number in other counties [*Madox's MSS. British Museum*, vol. 13]), to which add the dues and services annexed to other lands held immediately of the Crown, together with fines, forfeitures, &c. In the time of Edward 4, the revenue of the Crown was equal to a fifth of the lay property of the kingdom. (*Fortescue on absolute and limited Monarchy*.) Thus, is the rare attendance of the Commons satisfactorily accounted for.

Neither were *all* the Magnates necessarily present at a Great, or Common Council. When William 1st had instituted the Aula Regis, he summoned to it such of his followers only as he pleased; and Elsynge thinks it probable, that the lands and honours of the Barons being all at that time seized by the King, the Conqueror did first institute particular writs of summons to his Norman (new created) Lords, and to such English (if any) as he continued in that degree of honour. Be that as it may, Henry 2, in 1175, forbade any of those who had been concerned in the late rebellion, to come to Parliament without a particular summons. Simon de Montfort summoned only twenty-three temporal Peers to his famous Parliament. Indeed, before the establishment of a Parliamentary Peerage, (when, according to Spelman, there were about 30,000 *maiores et minores Barones*—"omnino prohibet *ingens eorum multitudo, quæ plus minus 30,000, nullo tecto convocari poterat*"), it must have been difficult and inconvenient to have summoned all. "It may be easily ghest they were very numerous "when every one had, by his revenue of cccc marks, a place in Parliament as Baron."—(*Selden's Titles of Honour*, 2d part, 277). Earls and Barons, were by descent, Lords of Parliament; their Peers, so called in *Modus tenendi Parliamentum*, were persons who, without inheritable nobility, possessed a landed qualification, and were therefore *quasi* Barons, by reason of tenure *per baroniam*; by virtue of which territorial obligation, at first when the summons was general, they used to attend the Parliament. Afterwards, members of this latter class were summoned or omitted, *ad libitum regis*; and, lastly, they were returned by the Sheriff, and sat by representation. Thus, from the inconvenient number of "the Thanes right worthy," now "right honourables," came the division into *Barones maiores et secundæ dignitatis barones*. The latter returned as knights of shires, insensibly melted down into the commonalty; and, gradually uniting with the representatives of cities and ancient boroughs, formed the Lower House. To this attendance of the lower nobility by representation,

of the kingdom required, from the early times of the Hephtharchy, (vulgarly so called, but which, it is said, was really a *Bretwaldaship* (a)); * through a succession of monarchs and dynasties, Angles, Saxons and Danes, to the Norman Conquest.

Thus, it is recorded as the first memorable act of Ecgberht, that in a witan, held at Winchester; "*mutavit nomen regni de consensu populi sui et jussit illud de cætero vocari Angliam*" (b). The use of the compound, *Anglorum-Saxorum, rex*, had occurred before the time of Ecgberht; and the Angles always got the precedence of the Jutes and Saxons, as being the strongest.

Under
Ecgberht,

So, Cnut, on his accession to the throne, after the murder of Eadmund Ironside, "*omnes episcopos et duces, necnon et principes, cunctosque optimates gentis Angliæ, Londini congregari jussit*" (c).

Cnut,

After the Conquest, there is some authority and equal reason to believe, that General Councils were occasionally, though less frequently convened, and only on pressing emergencies, by the Norman line; as "when the Conqueror," if we may rely upon Hoveden, "caused twelve persons, skilled in the customs of England, to be chosen

The Con-
queror,

(a) Lappenberg, vol. 1.

(c) Fil. Wigorn a. 1096.

(b) Ibid.

instead of personal summons,—their election by the whole body of the freeholders—and their separation along with the citizens and burgesses from the House of Peers, is, in part, to be ascribed that valuable peculiarity in the constitution of England,—the equality of all ranks below the Peerage; the sons of Peers becoming Commoners; "an *isonomia*, an equality of civil rights, which the philosophers of ancient Greece only hoped to find in democratical governments."—*Hallam*; but which presents in England, the most grand and striking feature of the mixed form of government, equality before the laws; the law having no respect for persons. And perhaps, (if it be not a refinement, while it is only hazarded as a probable conjecture), to this circumstance, the loss of their former real rank, or station of equality with the Peers, is, in great measure, to be attributed the aristocratical tone and assumed stateliness of manner, of old English country gentleman society.

* A political institution, under which the whole Germanic part of the island, composed of Angles (by far the most numerous) Saxons and Jutes, allied, but subject states, were united under an elective Emperor. Ecgberht was acknowledged as the eighth Bretwalda, but he was instead, a Suzerain lord.

“ from each county, who were sworn to inform him rightly
 “ of their laws; and these, so ascertained, were ratified by
 “ consent of the great council” (a): which Sir Matthew
 Hale asserts to be as sufficient and effectual a Parliament
 as ever was held in England, (which is true in substance,
 though the term Parliament is of more recent use).

Rufus, And, as “ *totius regni adunatio*, held at Rockingham, in
 “ the reign of William Rufus, when, as may be collected
 “ from Eadmer, ‘ a certain knight came forth, and stood
 “ ‘ before the people, and spake,’ (as Speaker of the Great
 “ ‘ Council, Hakewill supposes), ‘ in the name and behalf of
 “ ‘ them all, whereby the mind and consent of the people
 “ ‘ was understood.’ ”

Henry Beau- And, as Henry Beauclerc sent his “ Gewrights” over all
 clerc, England, and summoned his Bishops, Abbots and Thaness,
 to his Witan-a-gemot, (*eo nomine*) to be held at Gloucester,
 on Candlemas day.

John, And, as John, in the Great Charter, promised “ to sum-
 “ mon all archbishops, bishops, abbots, earls and greater
 “ barons personally, and all other tenants in chief under
 “ the Crown, by the sheriff and bailiffs, to assess aids and
 “ scutages, when necessary:” till in the reign of Henry 3,

Henry 3. by a novelty and in truth, perhaps an usurpation, of the
 then successful Barons, the principle of popular representa-
 tion, which had been slowly growing up, was suddenly and
 boldly extended, and that without exciting opposition or
 even remark, so much were the minds of all persons pre-
 pared for it. In the 49 Hen. 3, (perhaps before), writs
 were unquestionably issued to summon knights, citizens,
 and burgesses to Parliament.*

(a) Sir M. Hale’s Hist. of Com. Law. Prynne’s Animad. 32.

* The earliest writs of summons to cities and boroughs of which we
 can prove the existence, are of 49 Hen. 3. “ After a long controversy,
 “ almost all judicious inquirers seem to have acquiesced in this origin
 “ of popular representation.”—Hallam. The following observations of
 the same writer are perfectly just. “ To grant money was the main
 “ object of their meeting; and if the exigencies of the administration
 “ could have been relieved without subsidies, the citizens and burgesses
 “ might still have sat at home, and obeyed the laws which a council of
 “ prelates and barons enacted for their government.”

These deputies of boroughs, who before 49 Hen. 3, were only occasionally and specially convened, in order to grant subsidies and vote supplies, were finally and permanently engrafted upon Parliament, by Ed. 1 (a)*; but it is still questionable whether they gave, for some time, any thing more than a constructive assent to the laws enacted. The writ in 22 Ed. 1, directs two knights to be chosen, "*cum plenâ potestate pro se et totâ communitate comitatûs prædicti ad consulendum et consentiendum pro se et communitate illâ, hjs, quæ comites, barones et procures prædicti concorditer ordinaverint in præmissis;*" (b) which implies that these representatives of the Commons were to bear their part in deliberation; but these knights of shires corresponded to the lower nobility of other feudal countries, and had originally belonged to the same branch of Parliament as the barons.

Henry 3,

Edward 1.

In these general councils, all matters of importance were discussed and settled. Some plan would of course be devised, for authenticating, preserving, and transmitting their decisions. This was done by entering them on the rolls of Parliament. These, give an account of all proceedings, judicial and legislative (c); and, indeed, often contain intimations of laws intended to be made, of which no other trace can be found.

Mode of preserving decisions of National Councils.
Rolls of Parliament.

(a) 4 Inst. 2. Ingulphus (1109) saith, "*Rex Eldredus convocavit magnates, episcopos, procures, et optimates ad tractandum,*" &c.

(b) Hallam's Middle Ages, vol. 2, c. 8.

(c) Reeves' Hist. Eng. Law, vol. 3.

* According to Ruffhead, (*Pref. Edit. Stat.*) the first regular precept directed to the sheriff for the election of citizens and burgesses, of which we have authentic memorial, is 21 Ed. 1. There are writs for the election of knights, 11 Ed. 1, (1 *Parl. Hist.* 87). Besides the difference from the writs of 49 Hen. 3, of being sent to the sheriff of the county, instead of going to the cities and boroughs, the Statute *de Tallagio*, &c., attributed to the 25th Ed. 1, bound the King not to impose taxes without the aid of the Commons in Parliament assembled, and thereby secured their convocation. "The convention of such an assembly in Parliament whenever the Crown wanted aid from the people, thenceforth became a necessary measure, and a measure to which the resort unavoidably became frequent, in consequence of the increasing necessity of the Crown for extraordinary aid from various causes."—See *Lords' Committee on the Dignity of a Peer*.

Ancient mode
of making laws.

Receivers of
petitions ap-
pointed.

Tryers of
petitions.

The course our ancestors pursued in procuring a bill to pass into a law, was the most obvious and natural, and agrees admirably with the simplicity of those unlettered times. As one of the principal ends of calling Parliaments together was avowedly, the “redress of the mischiefs and “grievances that daily happen” (a), not only had the Commons a chief care in the beginning of Parliaments, to appoint their committees of grievances, but receivers* of petitions were regularly named; some for England, and some for the dominions beyond seas. “Then, were appointed of the “nobility, (lords of Parliament, and bishops), certain* tryers “of petitions, to try out whether the remedies sought for, “were reasonable and fit to be propounded.”

The evils that required, or were supposed to require, an immediate remedy, were thus brought under the early notice of Parliament, as soon as it assembled. Parliamentary peti-

(a) 4 Inst. 11, citing 36 Ed. 3, 1 Hen. 5, no. 17. 13 Hen. 4, no. 9. c. 1 & 4, and al-Rot. Parl.

* There appears to be some doubt *by whom* receivers and tryers of petitions were appointed. Elsynge has collected the precedents.

An. 25 Ed. 3, *sont assignez*.

An. 20 Ed. 3, *furent assignez*; without saying by whom.

An. 21 Ed. 3, *Fu ordene que certaines persons seroient assignez pour recever les petitions*. But ascending higher, an. 6 Ed. 3, saith “*par “nostre Seigneur le Roy et son Conseil*.” And they were nominated, it would seem, before Parliaments assembled, though after 29 Ed. 3, the cause of summons was always declared first, before the names of the receivers and tryers were published. Thus

An. 40 Ed. 3, the Lord Chancellor concludes his speech touching the summons, “*que chescun qui se sent grievez mette devant sa petition “a ces (qui) sont assignez de par luy les recever aussi de les trier*.” Elsynge concludes, “These satisfy me fully that none but the King “or the Lord Chancellor *de par luy*, appoints these receivers and “tryers, &c. I have perused all the records of Ed. 3, for this purpose, “for that some doubt had been made thereof.” From the same writer we learn that receivers of petitions were ever the masters of the Chancery, but when receivers began to be out of use, and named *pro formâ tantum*, the judges were mingled with them. As none that were summoned to Parliament were appointed receivers, so none but those who were summoned, were appointed tryers of petitions; “they “were ever of the prelates, nobles and judges;” a distinction that has escaped the sagacity and attention of Mr. Reeves, by whom receivers and tryers are confounded; which is the more extraordinary, as an explicit account of them is to be found in the 4th Institute. The Chancellor and Treasurer were appointed to be called, when need required and they could attend.—*Elsynge*.

tions, it requires to be stated, were of two kinds, public and private. In ancient times, both these were answered by the *consilium ordinarium*. Afterwards, but as early as 8 Ed. 2, *auditores petitionum* were substituted, and these latter gave answers to all parliamentary petitions (a). These *auditores petitionum* were assigned sometimes *pur oyer les petitions*, and sometimes *pur responder al petitions*, and sometimes *pur oyer et trier les petitions*. And during all this time, they had power to endorse an answer on petitions (b). After 28 Ed. 3, they were only assigned to be tryers; being confined, in that capacity, to examining the petitions, and delivering them over to the *consilium regis*, or, in cases of weight and difficulty, to the *magnum consilium*, to answer.*

Petitions of *grace* were indorsed *coram rege*, that the tryers might not answer them, *rege inconsulto*. Petitions

(a) Parl. Hist. 369.

(b) Hale's Juris. of Lords, by Hargrave.

* This reference of cases of difficulty to the *magnum consilium*, assisted, as it usually was, in its decisions by the *consilium ordinarium*, seems to have been the origin of that anomaly in the British Constitution, the appellant jurisdiction of the House of Lords. There seems little doubt that upon sound constitutional principles, the *dernier resort* of judicature is, and must properly be, in the King, Lords, and Commons. Skinner's case (1666) disposed of the unfounded claim of the Lords to original jurisdiction, and motives of policy, disclosed in the admirable speech of Lord Shaftesbury in 1675, induced the Commons to acquiesce in the exercise of the appellant jurisdiction of the Lords over equity, as well as over judgments at law, in the fear of further augmenting the then formidable power of the Crown. But however irregular and unconstitutional the appellant jurisdiction of the Peers might be in its origin, it has now obtained sufficient sanction from long practice. As is justly observed by Mr. Hargrave, (see preface to Hale's Jurisdiction of the Lords, edited by Hargrave,) "so long as it shall be duly administered, and not founded upon to attract original jurisdiction, or to absorb the supreme judicature and real last resort of the whole and full Parliament, it is too beneficial in its effects to be lightly revoked." It might, however, be prodigiously improved, by having, according to Sir Matthew Hale's plan, "a certain select number of the Lords, with the judges, commissioned to hear and determine errors in judgment and decrees;" and perhaps by retaining the Lord Keeper of the Great Seal altogether in the House of Lords, and appointing a Lawyer Chancellor, to sit in the Court of Chancery. Thus *inverso ordine*, reducing the Chancellor to his ancient inferior rank, and making the Lord High Keeper the political and courtly Peer and Statesman.

Answers to
petitions for
legal redress.

rested under the seals of the tryers till they were answered (a).

Most of the answers, were in the nature of remissions of the petitions to those persons or Courts that had properly cognizance of the causes; as, "*sequatur ad communem legem;*"—" *mittatur ista petitio in cancellariam et ibi fiat justitia,*" &c.

An ordinance, 8 Ed. 1, recite, that the people who came to Parliament were often delayed and disturbed to the great grievance of them and of the Court, by the multitude of petitions laid before the King, the greater part whereof might be dispatched by the Chancellor and the justices and therefore it is provided, "that all the petitions which concern the seal shall come first to the Chancellor; and those which touch the exchequer, to the exchequer; and those which concern the justices and the law of the land, to the justices; and those which concern the Jews, to the justices of the Jews: so that the King and his council may, without the load of other business, attend to the great business of the realm, and of other foreign countries."

Thus it appears that originally, applications for judicial relief were made to the monarch in person. In answering these supplications, the King required and received the assistance of the council, the peers and prelates, and when it was sitting, of the Parliament itself. But the sittings of Parliament were then sessional, and as such, occasional and short, while the business of legislation constantly increased. The monarch, unable to discharge his various duties in person, appointed deputies to represent him, and more particularly in the Courts of justice. After this delegation of the royal power, it became the business of the deputies and assistants (the Chancellor and the judges) to receive and dispose of *these* petitions, and this is the probable origin of both the legal and the equitable jurisdiction of the Court of Chancery, and of the existing Courts of common law (b).

(a) Elsynge's Manner of holding Parliaments in England.

(b) Parke's History of the

Court of Chancery. Lord Campbell's Lives of the Chancellors.

But after the King had thus committed his judicial authority to the several Courts, it became a political principle that he could not personally exercise any judicial function. "*Pro-
prio ore rex nullus Angliæ, judicium proferre usus est*" (a), was a passage written by Fortescue, and relied upon by Sir Edward Coke at the celebrated conference between the Houses of Parliament respecting the liberty of the subject, for the purpose of showing that the King can do nothing in his public capacity without the agency of some responsible minister.

Sometimes answers were given to petitions wholly dismissing their prayer, because no law is to be found in the case; "*ne poet estre fait sans novel ley.*" When the case was thus novel and of a public nature, if the Commons thought proper to petition for such new law as the case was stated to require, and the petition was assented to by the Lords and by the King, the petition and answer were framed into a law, and entered on the statute roll.

Soon after the separation of the two Houses,* (for they

Answers to
legislative

(a) 2 Inst. 46.

* The admitted claim of the Commons to originate all aids and other public charges on the people, duly considered, serves to show to what extent the notion commonly received, that the Lords and Commons formerly sat together in one House, is well founded. See *Pref. Cott. Abridg. Stat.: and Elsyngè*, ch. 3.—*Locus et modus sedendi*—who says, "If we consider well the passages of the Parliament, 14 Ed. 3, in Lent, it will be seen that the Lords and Commons did sit together in one room. The cause of summons was declared to them altogether, touching an aid for the King; they considered thereof, and joined in grant of the subsidy, upon condition to have their petitions granted: a joint committee of the Lords and Commons are appointed to sit from day to day, upon the said petitions," &c. But shortly after, in the same chapter, in proof that the Commons had "a place assigned them of old, to deliberate apart in," he cites 5 Ed. 3. "The cause of summons ended, the Commons were willed to withdraw themselves to their ancient place in the Chapter House of the Abbot of Westminster, and there to treat and consult among themselves." (c. 3, p. 104). So Hakewill, "Petrus de Montford, Speaker of the House of Commons, 44 Hen. 3, (Regist. St. Albans, fol. 207), *vice totius communitatis*, consented to the banishment of Adomar de Valence, Bishop of Winchester, by which it may be conceived, that the Lords and Commons at that time sat in several houses, or at least gave their assents severally."—*Hakewill*, p. 200. The result is rather equivocal; but I am disposed to think, with Mr. Hallam, that

petitions;—
statutes them-
selves.

Answered by
the King, with
advice of his
Council; but
answers some-
times delayed.

do appear, in the early periods of our history, to have occupied the same room, but with an ancient place, in the Chapter House of the Abbot of Westminster, for the Commons to withdraw themselves and consult apart in), the Commons rapidly increasing in importance, all the principal acts appear to have been made on their petitions. They had now firmly established, and seem to have been determined fully to exercise, a co-ordinate power. As they constantly advanced in their demands, answers, as was to be expected, were sometimes delayed: though, according to the ancient (a), if not authoritative treatise, "*De Modo Tenendi Parliamentum*,"*—"Petitions being timely pre-

(a) 4 Inst. 12.

"the Commons may have sat at the bottom of Westminster Hall, while the Lords occupied the other end," having "an assigned place" to "withdraw themselves to, when they were willed;" as they now sit under the same roof, but in different rooms. It is at least clear that in the 11 Ed. 1, the Commons sat at Acton Burndell, while the Upper House was at Shrewsbury. It is quite another question whether they were ever intermingled in voting. That the Commons, who, if we include the knights among them, were at least double the number of the lay and spiritual Peers, should have been permitted to jostle this haughty aristocracy out of their ancient privileges by voting, or even deliberating promiscuously, upon measures of legislation, is most improbable, and Hallam says, "inconsistent with authority."—(Vol. 2, c. 8). Again, the Commons, being delegated solely to watch over the pecuniary interests of their constituents, were likely to be extremely tenacious of that exclusive privilege.

In another part of his work, Elsynge adduces three precedents of 6 Ed. 3, by which he says, "It appears plainly that the Lords and Commons did first meet together in one room, and yet had divers rooms to meet in severally and apart." The proceedings relative to the deposing of Richard the Second, have been thought to indicate the time from which Peers are to be considered as separated, in their parliamentary capacity, from the rest of the laity.—*By Peerage Committee of the Lords, George 1.*

* In 4 Inst. 12, Sir Edward Coke says: "Certain it is, this modus was rehearsed and declared before the Conqueror at the Conquest, and by him approved for England." But Mr. Selden nevertheless supposes it to be an imposture of the time of Edward 3, and Mr. Prynne would make it an invention of as late a date as 31 Hen. 6. The last-mentioned writer denies that the word "Parliament" had obtained this use at any time prior to the reign of Hen. 3. So Spellman. Gloss. *Voc. Parliam.* Its authority is certainly impaired by the charges brought against it; but the conjecture of the former writer would still leave it a very venerable antiquity; and this is all that it is expedient, or even necessary, to claim for it.

“ferred, Parliament ought not to be ended while any
“petition remained undiscussed, or to which at least a
“determinate answer had not been given.”

If the answer of the King, when it was obtained, proved favourable, it still remained to digest the whole into the form of a statute. This was too important and too delicate, as well as difficult a task, to be entrusted to common care or ordinary hands. The bills themselves, therefore, were drawn (perhaps left) in the form of petitions, which were entered on the Parliament rolls, with the King's answer subjoined, not in any settled form of words, but as the circumstances of the case required; and at the end of each Parliament, (but not until a dissolution), the judges drew them into the form of statutes, which were entered on the statute roll.

When received, petitions entered on the Parliament Roll, with the King's answer subjoined.

At the end of Parliament, drawn up in the form of statutes, and entered on the Roll.

Early irregularities in our parliamentary proceedings.

The rolls of Parliament in the reign of Edward 1, present many irregularities, which show that our representative system was yet in it's infancy. On one occasion the Writs of Summons were confined to the Archbishop of Canterbury, and four other bishops, with four earls, and four barons; and yet the instrument convening them was docketed ‘*de Parlamento tenendo.*’ Under the same Prince, a Parliament is found, composed of the temporal lords only, with four of the judges. We find in the same reign, citizens and burgesses convoked for making Ordinances, (but relating to trade and municipal privileges alone), without the presence of either the lords or the knights of the shire. And in January, 1283, two separate Houses of Commons are discovered, sitting at the same time, at different places!—those from the South of the Trent at Northampton, and those from the North of the Trent at York; and communicating their resolutions to a third assembly of Barons, at a distance from both (a).

By a statute of Ed. 2, a declaration is made that every legislative measure, not sanctioned by the consent of King, Lords, and Commons, shall be void; but this has been sup-

(a) Record Commission and Rolls of Parliament.

posed to extend only to the imposition of scutage (a). This important provision not only requires the assent "of the prelates, earls and barons, and the commonalty," but adds, "according as hath been heretofore accustomed," which, as Hallam observes, recognizes it as standing upon a custom of some length of time; yet this legislative declaration is contended to be of limited operation, and may not be strained by a candid inquirer, beyond its fair import. Still the oath taken by this King, at his coronation, to hold and keep the laws and customs which the commonalty of the kingdom should establish, recognized in its fullest extent the legal government by King, Lords, and Commons.

The right of legislation in the Commons established upon a firm footing.

It was in the reign of Ed. 3, that the constitutional principle, that the King and two Houses of Parliament in conjunction, possessed exclusively the right of legislation, was recognized as established on a firm footing. Laws were now declared to be made by the King "at the request of the Commons," and "by the assent of the Lords and Prelates." Such, at least, was the general form; though for many subsequent ages there was no strict regularity in this respect (b). In the 45 Ed. 3, there is an instance of a "Summonce of *half* the knights, citizens, and burgesses." The Commons, who till this reign were rarely mentioned, were now as rarely omitted, in the enacting clause. But their petitions were often extremely qualified and altered by the answers;* to say nothing at present of interpolations.

Analogies or contrasts with other governments.

The state of our legislation at different periods of its early history, may be fitly illustrated—sometimes by analogies; occasionally by contrasts, with other governments. In all the continental monarchies the people were regarded merely

(a) Somers' Tracts, Geo. 1; (b) Madox' MSS. British Museum. Stat. 15, Ed. 2, 1322.

* Copies of petitions in Parliament, and answers thereto, as early as 6 Ed. 1, and in various years of Ed. 2, and Ed. 3, are among Lord Hale's manuscripts, in the library of Lincoln's Inn. Some petitions and bills, previous to 12 Hen. 7, are in the Tower of London, but in no regular series. Rolls containing pleas, petitions, and answers, from 18 to 35 Ed. 1, were in the Chapter House at Westminster.

as petitioners for improvements in the laws, and undeniably the ancient mode of exhibiting a bill in England, corresponded with those maxims. But this humble and respectful mode of proceeding by petition from the Commons to the King, never had place in Scotland; "where," says Professor Millar, in his *'View of the English Government,'*—"we see the National Council holding a very different language. They assume a dictatorial tone, avow the enactment of laws by their own authority, and even frequently ordain, without ceremony, that the King shall carry their measures into execution." We meet with no traces of the interposition of the royal negative upon bills. As Parliament in that country was not divided into two houses, the King seems to have been regarded only as President of that Assembly, and not as a particular branch of the Legislature, and his voice was taken as included in its general determinations.

To return to England; sometimes the Commons* contented themselves with showing their grievances, and praying a remedy from the King and his council. Of this a familiar but very distinguished instance is the great statute of treasons. In the petition whereon this act is founded, it is merely prayed, that, "Whereas, the King's justices in different counties adjudge persons indicted before them to be traitors, for sundry matters not known by the Commons to be treason, it would please the King, by his council, and by the great and wise men of the land, to declare what are treasons in this present Parliament." (a) The answer to this petition contains the existing statute, as a declaration on the King's part; but there is no appearance

(a) Hallam's *Mid. Ages*, vol. ii, c. 8.

* Professor Christian observes, in his notes to Blackstone, that "the Commons continued for a long time to use the tone of very humble petitioners," without perceiving that they were at the time in the very act of exercising the highest function of a legislative assembly. It was much to gain an acquiescence in the doctrine, that laws should only be enacted on their petitions. They had no objection to a respectful form, when they were securing a substantial power.

of its having received the direct assent of the Lower House. The reason is palpable. The statute of treasons was declaratory of the ancient law. In innovations, or permanent and material alterations, as has been already shown, a more direct concurrence of all the estates was required.

Enacted that certain of the Commons should be present at the engrossing of the rolls, to prevent falsification of answers.

In the 8 Henry 4, it was enacted, at the request of the Commons, that certain of the Commons' House should be present at the engrossing of the Parliament rolls (*a*). This had become necessary from an offensive and corrupt practice, which obtained at the time of entering the bill on the statute roll, of making alterations (diminutions or additions), whereby the act was rendered materially different from the petition of the Commons. This unwarrantable conduct of the judges, in falsifying the record they were entrusted to frame, seems strangely to have escaped the animadversion of historians.* That such confidence, so reposed, should

(*a*) Reeves' Hist. Eng. Law, vol. iii.

* This is meant particularly of the compilers of the old Parliamentary History; but it is, there is reason to conclude, generally true of all our historians, with the exception of Mr. Hallam. The fact is no doubt mentioned, but not with the reprobation it deserves, in the more professional publication of Mr. Reeves. There is in the British Museum a MS. of Mr. Madox, entitled "*Expeditionis Billarum Antiquitas*," fol. p. 218. In the proeme, after mentioning the ancient form of exhibiting bills, the answers and the statutes drawn up in consequence thereof, the author adds, "all which is now so exactly done, that "neither House can be mistaken, nor the Commons abused by bills "delivered in their names, which they assented not unto, nor defrauded "of those good laws which were granted, nor any law put upon them "whereunto they assented not; all which happened in former times." At the end there is a striking petition and remonstrance of the Commons to this effect, as early as 9 Ed. 3, but it seems nothing was done thereon. And see 1 Woodison, Lecture 1.

Speaking of the practice of leaving statutes to be drawn up by the judges, Mr. Hallam observes: "It presented an opportunity of falsifying the intention of the Legislature, whereof advantage was often "taken." He proceeds to give some very remarkable instances "of "this fraud," as he plainly and most justly denominates it. An ordinance was put upon the rolls of Parliament in the 5th of R. 2, empowering "sheriffs of counties to arrest preachers of heresy." This was introduced into the statutes of the year. In the next Parliament the Commons, reciting this ordinance, declares that "it was never "assented to or granted by them, but what had been proposed in this "matter was without their concurrence: and pray that the statute be "annulled; for it was never their intent to bind themselves or their "descendants to the Bishops, more than their ancestors had been

have been scandalously violated, might certainly, to sober minds, appear incredible. But, unfortunately, too many

"bound in time past." The King returned an answer agreeing to the petition. Nevertheless the statute remains unrepealed, except by desuetude. In like manner the statute against heresy, 2 Hen. 4, is not grounded upon any petition of the Commons, but only upon one of the clergy. So much for two of the first intolerant acts of our statute book.

Mr. Reeves, *pudet dici*, becomes the feeble and lame apologist of the judges. For instances of attempts on the part of the Commons to prevent these unfair practices, see Ruffhead, *Pref. to Stat.* and Pryme's *Pref. to Cott. Abr. Records*. It would be an easy matter to accumulate proofs that the judges before the Revolution, were not what, with a few unimportant exceptions (such as

"Hard words and hanging—if your Judge be Page."—*Pope*). they have happily continued to be since,—objects of universal and merited respect and confidence. Leaving uncited the more notorious cases of Richard the Second's judges, and Scroggs and Jeffries,—how pestilent is the secret opinion of the judges privately delivered to Charles 1st, before his assent to the Petition of Right, "that there was no fear of his being concluded by it, as the cases must be left to them to determine!" how flagrant the admitted charges against C. J. Kelynge, of "fining grand jurors for not finding according to his directions,"—of "threatening petty jurors into verdicts,"—besides calling "Magna Charta," when cited to him, "Magna F——a." Not that the latter instances should ever be mentioned, without referring, as a set-off, to the magnificent judgment of C. J. Vaughan, in Bushell's case, (*Vaughan's Report*, p. 135), where the recorder had imposed upon each jurymen a fine of forty marks, and imprisoned them till it was paid, "for following their own judgments and opinions rather than the good and wholesome advice given them by the Court." Of what nature the wholesome opinions, respecting the constitution of Parliaments and the government of the kingdom, which they might hear from the bench, sometimes were, may be learned from a charge of Baron Weston in 1680. "Nothing will serve them but a Parliament; for my part, I know no representative of the nation but the King; all power centres in him:" till Andrew Marvel observed, "What standing forces, what Parliamentary bribes could not effect, was more compendiously acted by twelve men in scarlet;" and one of the means, "an auricular taking of opinions," as Sir Edward Coke terms it.

It is far more profitable to point out, that, while a magnanimous prince, like our Elizabeth, has applauded the judges who refused to be governed by her directions in matters of judicature before them contrary to their oaths: (15 *Rym. Fæd.*) and while the conduct of Sir E. Coke, in the great case of *Commendams*, has redeemed all his errors, and transmitted his name with distinguished honour to posterity; the treatment, on the contrary, which more obsequious judges have afterwards received at the hands of their insolent employers, is anything but encouraging. It is Lord Clarendon, who sneeringly speaks "of reasons of state urged as elements of law;" of "judges as sharp-sighted as secretaries of state, and in the mysteries of state:" "judgments of law grounded on matter of fact, of which there was

instances of a similar kind, "begot from the iniquity of "the times," clearly show to what a frightful extent of judicial profligacy a heedless subserviency to the wishes of a Court may imperceptibly, because gradually, lead. Regarded in this light, the criminal silence of historians is particularly deserving reprobation. It is always to be hoped that the due mention of such unprincipled proceedings may excite a salutary terror;* or, perhaps, operate as a timely warning. At all events, *he* is not a useful writer, who avoids or neglects, as he proceeds, to mark the boundaries of right and wrong;—he is not an honest one, who, encountering such delinquents *on his way*, hesitates to brand them with the infamy they have deserved!

The same complaints repeated.

It does not appear that the grievance complained of, was entirely remedied by the precautions taken. For in the second year of Hen. 5, we find the Commons again remonstrating† and contending, that, as they were as well assen-

"neither inquiry nor proof." Not only this, but they are absolutely made the scape-goat for the errors and heresies of others! "These "errors (for errors they were in view, and errors they are proved by "the success), are not to be imputed to the Court, but to the spirit "and activity of the lawyers; who should more carefully have preserved their profession and its professors from being profaned by "those services which have rendered both so obnoxious to reproach. "The damage and mischief cannot be expressed which the Crown and "state sustained by the deserved reproach and infamy that attended "the judges, by being made use of in these and like acts of power; "there being," Lord Clarendon concludes, with great force of truth and moral beauty, "no possibility to preserve the dignity, reverence, "and estimation of the laws themselves, but by the integrity and innocence of the judges."—*Hist. of the Rebellion*, vol. i. p. 53. So James 2 gave up Jeffries—and Jeffries—the King.

* That "the execution of Tresilian, and the banishment of the "other '*legicides*, did serve as a *circumspecté agatis* to the succeeding "judges till Elizabeth's reign," see *Petyt. Jus. Parl.* ch. 8. The same may be said of "the fate of Dudley and Empson," and the impeachment of the judges who concurred in the judgment against Hampden. See *Luder's Tract on the Station and Character of the Judges of the 16th and 17th Centuries*.

† This petition, memorable on many accounts, besides its intrinsic importance, is deserving of notice as the earliest instance in which the House of Commons adopted the English language. They had noble sentiments to utter, and they must presently have discovered that they were able to embody them in suitable expressions; that there was no want of copiousness or of energy in the vernacular tongue. The instrument in question, is written with great facility, as well as animation and vigour of style. It prays that "So as hit hath

tors as petitioners, statutes should be made according to the tenor of the writing of their petitions, and not altered. The answer was at once large and gracious:—"The King
"grantes that fro henceforth, nothyng be enacted to the
"petitions of his commune that be contrarie of hir askyng,
"wharby they shuld be bounde without their assent."
"Saving, &c. his real prerogatif to grant and deny what him
"luste of their petitions, &c."

Memorable petition of the Commons.

Gracious answer of the King.

Will it be believed, after this wise and dignified answer, giving an unequivocal assent to the important prayer of their petition, that no vestige of either is to be found among the statutes? The compilers of the statute roll, it seems, were able to keep out of it the very provision that was intended to restrain their unseemly practices (a).

It was probably to prevent a continuance or repetition of these mistakes and abuses, that subsequently in this reign, the statutes appear to have been drawn up by the judges before the end of the Parliament. About the close of the following reign, (of Hen. 6,) bills in the full and complete form of Acts of Parliament, according to the modern custom, were introduced. And this, in the opinion of Sir Matthew Hale, was only "a return to the juster method," which originally prevailed in the time of Edward I, "when
"acts were drawn up in the form of a law in the first
"instance, and so assented to by both Houses and the
"King" (b).

In H. 6, bills introduced in the form of acts.

(a) Reeves' Hist. Eng. Law, vol. iii.

(b) Hale's Hist. Com. Law.

"ever be their libte and freedom that thar shoulde no statute ne law
"be made offlasse that they yaf thereto their assent; considering that
"the comune of your londe, the whiche that is and ever hath be a
"member of your Parliament, ben as well assentors as petitioners,
"&c." The authors of the Parliamentary History say the roll of this Parliament is lost, and suppress this petition!

It may be observed in passing, that the earliest instance recorded of the use of the English language in any Parliamentary proceeding, is in 36 Ed. 3, when the causes of summoning the Parliament were declared "*en Anglois*."—*Report of Parliamentary Commissioners on Public Records*, &c. 1805; a pregnant proof, both of the presence of the commonalty at the deliberations of that period, and of their growing importance. But see *ante*, p. 8, the Doms of Ethelbert said to be written in English, meaning Anglo-Saxon.

This opinion, which the learned writer states to be drawn from "the very observation of the contexture and fabric of the statutes of those times," does not come supported by any (other) authority, or verified by any instances adduced in the progress of his work. It asserts, or rather infers, a fact, little agreeable perhaps to probability and the natural course of events. But it is nevertheless, entitled to great respect, as the judgment of a very profound lawyer, upon the structure of those early records and the internal evidence afforded by the statutes themselves, of the early and general concurrence of all the branches of the Legislature.*

Important consequences of this alteration.

But what is of more importance than the form in which a law was introduced, is the principle from this time established—that the King must admit or reject the identical instrument, without qualification (*a*). This alteration wrought an extraordinary effect on the character of our constitution. So long as the King continued to grant petitions in part, and to engraft new matter upon them, (it must be admitted in candour, and as some extenuation of the conduct of the judges,) it would be extremely difficult, at a distance of time from the petition and answer, to draw

(*a*) Hallam's Mid. Ages, vol. ii. c. 8.

* One convenience certainly attended the ancient practice: that the acts were skilfully prepared by competent persons. In the preface to his Reports (part 2d) Coke seems to regret its discontinuance. "If," says he, "acts of Parliament were after the old fashion penned, and by such only as perfectly knew what the common law was, before the making of any act of Parliaments concerning that matter, as also how far forth former statutes had provided remedy for former mischiefs and defects discovered by experience, then should very few questions in law arise, and the learned should not so often and so much perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences, and provisoes, as they now do." By "the judges" it has been shewn, acts of Parliament were "after the old fashion penned;" and *they* best answer the description of such as perfectly know what the old law was. The King's Attorney-General and the King's counsel of the degree of King's serjeants, in the character of assistants, used to assist the tryers of petitions in trying out what petitions were reasonable, and considering what new enactments were required, and actually sat in attendance in the Treasury Chamber for that purpose; and why should they not now?

up statutes which should be the acts of the whole Legislature. But when Bills were brought into either House of Parliament, in a perfect shape, containing the royal assent, and the whole form of a law, which the King had no power to modify, but could only reject, it became manifest, if such bills passed into a law, that they derived their entire efficacy from the joint concurrence of the three branches of the Legislature.* This sound constitutional doctrine was happily established in England, about two centuries ago, owing to the firmness of a Chief Justice (Lord Coke;) while in France to this day, it is not, it is said, with exactness defined, what may be done by royal *ordonnance*, and what can only be done by an act of the Legislature. Here, it is ascertained that the King's province is simply to reject or to approve. The power of legislation given by two statutes to Hen. 8, (a) was a direct infraction of the constitution effected under the Tudors, but which had never been at all endured in the time of the Plantagenets (b). A royal proclamation † never properly possessed any efficacy to create (c) but only to promulgate or enforce a law. Under the Stuarts, indeed, this, with every other free principle, was again brought into question and for a time, trembled in the balance; but right prevailed.

Office of proclamations to enforce, not to create laws.

The victory of the Commons was, by this change, complete. Their power, as an integral and indispensable part of the Legislature which they had been long labouring to establish, was now firmly consolidated, and they were effectually secured against any future violations of their legislative rights. It was at this period, therefore, for the first time, true, in *practice*, though it had been long before

Practice now conformable to principles, of our legislation.

- (a) 28 H. 8, c. 17; 31 H. 8, c. 8. Rep. Brodie's Hist. and Introduction.
- (b) Hallam's Const. Hist. vol. 1.
- (c) Case of proclamation, 12

* Prynne, in contending for the sovereignty of Parliament, makes the following use of this doctrine:—"The King cannot alter any one word or letter in bills, but must either absolutely assent to or consider further of them."

† "Indictments conclude *contra leges et statuta*; but I never heard of an indictment *contra regiam proclamationem*."—Per Lord Coke.

correctly stated as the *principle* of our Government, that
 “ *le ley de la terre est fait en Parlement, par le Roy et les*
 “ *Seigneurs, Espirituels et Temporels, et tout la Commu-*
 “ *nauté du royaume*” (a).

And here properly terminates the introductory inquiry into the origin, nature, and structure of ancient statutes.*

(a) 11 R. 2, Rot. Parl. vol. iii. p. 293.

* The highest authorities upon these subjects are, the Statute roll, the Parliament roll, and the Journals of both Houses of Parliament. The most ancient of the journals of the Lords are from the beginning of the reign of King Hen. 8 : of the Commons, from 1 Ed. 6. Those of the Lords “were always the best preserved.”—See Hakewill Pref. to “*Manner how Statutes are enacted in Parliament, by passing of Bills.*” But they have no index, and those of the Commons a very imperfect one. Elsynge is a high authority upon these subjects. Hakewill, a curious little work. Hatsell too well known, and too often cited, to require further mention of his very useful, liberal and constitutional volumes. Consult also, Reeves’ History of the Law, Hallam’s Middle Ages, Brodie on the British Empire, and Lord John Russell on the Constitution, with Mr. Phillipps’s Notes on the State Trials, and Amos’s Notes to Fortescue. And refer to *Rot. Parl. and Pet. a tempore Ed. 1 ad 1 R. 3*, British Museum, 29 vols; and to Turner, Palgrave, and Lappenberg as to the Anglo-Saxons. Besides Lappenberg, Phillipps, Schmit, and other able scholars of Germany, have written upon the Anglo-Saxon laws under the Norman and English governments. Great also is the obligation of the writer, to the articles believed to be Allen’s, in the Edinburgh Review.

CHAPTER II.

Of the Ancient and Modern Manner of Proceeding in Parliament, and the Method of making Laws—The Forms observed at the opening of Parliament, previous to the commencement of Business—The Speaker's Election, and Prayer for the Privileges of the House.

HAVING in the last chapter, defined and distinguished acts of Parliament—having traced their rise, course, history, and improvement,—before entering on the division of statutes or an analysis of their various parts and qualities, another fruitful subject solicits the reader's attention. It is proposed in the next place, to consider, but only incidentally, the ancient and modern manner of proceeding in Parliament, and the method of making laws; to investigate with some minuteness, in this and the succeeding chapters, the mode in which Parliament is convened and opened, the routine of preparatory business, and the way in which bills may be introduced, read, committed, amended, engrossed, and passed;—noticing the distinctions in the passing of public and private bills, and endeavouring to supply all essential and useful information as to the steps to be taken, and the rules and practical forms to be observed, in procuring their enactment.

Ancient and modern manner of proceeding in Parliament, and method of making laws.

By private bills, in this place, must be understood to be meant in a Parliamentary sense, local and personal and private bills, granted on the solicitation of parties, and such as cannot be passed without fees becoming payable in both Houses. The technical difference between public and private bills and their incidents respectively, will be more suitably considered in another place.

It can scarcely be necessary to recapitulate the constituent parts of a Parliament. The imperial Parliament of the

The king sub-
ject to the
Statute Law.

United Kingdom of Great Britain and Ireland, is composed, as has been seen, of the King, in his regal political capacity, the Lords spiritual and temporal, and the Commons. The collective Parliament is the supreme Legislature. The King is subject to the Statute Law.

But to the constitutional, as opposed to the mere legal reader, it may be acceptable to pluck a flower by the way; (*minus via lædet*;) to take an encyclopædic view of these component parts, with their respective incidents and separate functions and duties. Thus, it is proposed to treat concisely of the kingly office; the rise and growth of the royal prerogative and its exercise in the Anglo-Saxon and the Norman Æras; and under the Plantagenet, Tudor and Stuart princes. So, the vocation of the House of Lords, will be considered; the position and functions of the Lords spiritual, and the station and duties of the Lords temporal; and the mission of the people's representatives, — the Commons.

Of the kingly
office.

In speaking of the King, when acting as a legislator, an assentor to the petitions of his people in Parliament; Fortescue first used, what Blackstone afterwards adopted, the qualifying phrase, "in his regal, political capacity;" evidently meant to indicate the constitutional restraints to which a King of England was always subject. "A King of England cannot at his pleasure make any alteration in the laws of the land," says the authoritative instructor of a youthful prince, "for the nature of his government, is not only regal, but political. Had it been merely regal, he would have a power to make what innovations he pleased in the laws of the kingdom, and impose talliages upon the people, whether they would or no, without their consent; but it is otherwise, when he is restrained by political laws" (a).

The two great divisions of civil rule, the absolute or regal, and the political, Fortescue proceeds to deduce from the several originals of conquest or compact. Concerning

(a) Fortescue *de Laudibus Legum Angliæ*, c. 9.

the latter he emphatically declares, (a truth not always palatable to princes;) that such governments were instituted "by the people, and for the people's good."

These were the ancient laws, and this the original constitution of our mixed Government, derived from the Germans, and as yet undebased by slavish notions of prerogative (a), borrowed from imperial or pontifical Rome; transmitted through continental monarchies, interpolated into our system, and refined and subtilized by Norman lawyers.

"The Anglo-Saxon *Cyning* reigned, as his kingly successor reigns," says Sharon Turner (b), "by no divine right. His office was the invention of the people." The people controlled the succession to the Crown. The *Cyning* was raised above every other class of society in character and power, in dignity and prerogative. For him, "a distinct *weregild* was established" (c). But he was not elevated above that law, to which both sovereign and people were equally subject. Subordination to the laws, whatever the rank, was the marked principle of the Anglo-Saxon polity.

The *Cyning*
of the Anglo-
Saxon Æra.

All the prerogatives and rights of the Anglo-Saxon *Cyning* were definite and ascertained, and under the limitation of the law. The royal rights and claims to property, were investigated and recorded in the official survey, with the same minuteness and certainty, as those of his subjects.* To provide for difficulties and dangers, the *Cyning* con-

His prerogative.

(a) Allen's Inquiry into the rise and progress of the Royal Prerogative. Palgrave's Rise of the Commonwealth, Ch. 1.
(b) Turner, vol. 3.
(c) Lappenberg, vol. 2.

* But the Jews were "his *property*!" and he received the fines arising from crime. And if he did not largely use the screw, because as Ælfred said, "he durst not;"—being removable;—his successors did, who were hereditary. With the Anglo-Saxons, indeed, money was the invariable atonement; every thing sounded in damages; the *Were* and *Bota*: man-bôt, the blood-fine. And proceeding further, we do not in this respect fare better. The Norman princes, Hallam says, were not a sanguinary race; but, by St. Gingough (by Jingo) they were, of all extortionate dogs any where recorded, the most rapacious. It required a combination of the barons, backed by the clergy and people, to make them promise not to "sell justice," and then, they did not keep their words. Every slice of old Anglo-Saxon immunities,

voked the council of the Witan, of which he was always an integral part; and summoned the people to the army, which he commanded (a). Though invested with judicial power, he never interfered till the local tribunals had been first resorted to; his tribunal was the last Court of appeal—he exercised the power of pardon.

The Corona-
tion Oath.

Such were some of the chief prerogatives of the Teutonic *Cyning*, as they are of his descendants, the kings and queens of England; with this difference, that the Anglo-Saxon *Cyning* was elected by the people out of a certain *caste*, while the Crown of the United Kingdom is now made hereditary. The *Cyning* was under the restraint of a stringent coronation oath, and his prerogatives were subject to limitation by the statute law; so the kings and queens of England are bound by an oath, in which they have promised and sworn “to govern the people of their kingdom and the “dominions thereto belonging, according to the statutes “in Parliament agreed on, and to the laws and customs of “the realm” (b). Palgrave gives the Anglo-Saxon clergy great credit for their good design in framing the coronation oath, which he says imposed a salutary limitation to the regal power, and inculcated the doctrine of moral responsibility in its exercise.*

(a) Turner's Anglo Saxons,
vol. 3, c. 4.

(b) 1 Gull. & Mary, c. 6.

every confirmation of *Magna Charta* and the *Charta de Foresta*, had to be paid for by a subsidy. This idea, (and the mode of expression) may be traced, at a much later period, when Lord Hale said “Every “line in the Statute of Frauds was worth a subsidy.” An individual had to buy, at a high price, permission to sue in the King's Courts: defrayed liberally *pro licencia comedendi*; and in a well known instance, paid dearly, for leave “to sleep one night with his wife!”

* “Our ancient Parliaments,” says the author of *Lex Parliamentaria*, “were so cautious, as to oblige our kings to swear at their coronation “*concedere justas leges quas vulgus elegerit*; or in the old French oaths of “Edward 2 and Edward 3, ‘*les quels la communauté aux eslue*;’” p. 46.—*Privilegia Londini*, pp. 6, 7. It was a popular charge against Charles 1 and Laud, that they altered the oath, by striking out *quas vulgus elegerit*, and inserting instead, “agreeable to the King's prerogative.” In the introduction to the laws of King Ælphred, is a remarkable expression, where speaking of the establishment of these laws *ex consulto sapientum suorum*, he adds: “*Forthau ic ne durst gedirst læcan*;” for that he durst not attempt to do it otherwise. Wilkins, 34; Lambard, 26. Those laws conclude in these words: “*Ergo, ego Ælphredus*

The high respect entertained by the Germans (a) for the female sex, was manifested in the exalted position occupied by the Anglo-Saxon queen. "She was the wife and the lady, in an especial sense. The King's consort was consecrated and crowned with him; or separately if he married afterwards. In the assemblies she sat on a throne by the King. She had a separate secular and spiritual Court establishment, which resembled that of the King, on a smaller scale. The *aurum reginæ*, (claimed as late as the time of Charles I., by Queen Henrietta Maria;) is a due to be traced in no other country." The result has been that queen's have always acted a conspicuous part in English history (b).

The queen consort.

"Afterwards," says Lappenberg (c), "the limited power of the Germanic princes, became greatly enlarged among the Anglo-Saxons, through the influence of the Catholic clergy and the traditions of the Roman Empire. The assumed titles of * *Basileus, Augustus, Imperator, &c.*, prove the early adoption of foreign, ill-understood ideas. The spirit of his friend, Charlemagne, continued to act in the Anglo-Saxon Ecgberht and his posterity. The nomination of the Ealdormen, the highest provincial officials, had, in his (Ecgberht's) time, already fallen to the King, and taken place of the choice of the people." Soon was imported into the system the monarchical theory derived

(a) Lappenberg, vol. 2, Ch. ult. Commonwealth, vol. 1, c. 21, p. 637.
(b) Rise and Progress of the (c) Vol. 2, p. 309.

"*omnibus sapientibus meis hic usus sum; et illi dicebant quod ipsis omnibus bene placuerunt ea quæ statuta sunt, ut observarentur.*"

* Ethelwerd the chronicler, who was an ealdorman descended from King Æthelred the First, calls himself "Patricius Consul Fabius-Questor Ethelwardus."

How ill do these high-sounding consular or imperial titles, accord with the miserable *minutiæ* of such regulations, as the following: "Wherever the King was staying, he could hold a Court of Justice, and the accused enjoyed his protection and peace within the verge of the King's temporary residence, as much as in the sanctuary of his palace; and that reckoned on every side, from the burgh gate where the King was resident, *three miles, three furlongs, three acres, nine feet, nine palms, and nine barley corns.*" "The man, at whose house (*hâme*) the King stopt to drink, was, as early as the time of Æthelbert, protected by a two-fold *bôt*."—*Laws of Æthelbert*, iv. v.

from the Empire, which holds the King to be always the maker of the law. But such was not the true original, nor such the real nature of the kingly office with us; nor such the historical recollections of the old forms of legislation. All laws among the Teutonic tribes, were discussed in a select council, composed only of the *Magnates*. The priests kept order; the chieftain first pronounced his opinion, and after him the other members of the nobility spoke, according to their rank and reputation; and certainly the matter was only promulgated to the people, after it had been previously considered and adopted by the council, and when it was of general concern. Tacitus *de moribus Germanorum*, describes this council with his usual force and condensation; “*De* “*minoribus rebus principes consultant, de majoribus omnes:*” Affairs of small importance were decided by the nobility alone; in matters of greater moment all were to be consulted.

Modern writers of great acumen and extensive research, have discovered much of the monarchical principle derived from Roman policy, penetrating into this branch of our system, and of course constantly extending the powers of the prerogative. The feudal system and military tenures were, (there is much reason to believe,) the results of the admixture of Roman jurisprudence and Teutonic customs (*a*).

On the fall and dismemberment of the Roman Empire, its old tributaries, the continental sovereigns, with their counts and constables, (*comes stabuli*), gathered up the purple fragments and set up for themselves some of the imperial pretensions. The evil was contagious—and Saxon England heard with dismay, from courtiers, priests and lawyers, the laudation of another system,—the dogmas of a different age;—and contrasted with her own rude, but free, maxims, such refined and courtly doctrines as the following (*b*): “A plenitude of legislative prerogative was vested “in the emperor; notwithstanding any power of legislation “permitted to a council. So that in relation to the sovereign,

(*a*) Palgrave's Introduction.—
Allen.

(*b*) See Palgrave's Rise and
Progress of the Commonwealth.

“ the ordinary duty of the council consisted in the presentation of petitions to the throne, for three objects alone: 1, redress of abuses; 2, matters of grace and favour; and 3, the alteration and amendment of the laws.” Laws enacted upon the provisions of councils could be repealed at any time by the mere motion of the emperor, whose power of legislation was undiminished and uncontrolled.—“ Taxation resulted from the unrestricted pleasure of the Emperor.”—In a word, the emperor (and his successor, the “ monarch,”) governed all things by his sole will, absolute power and undefined authority. The clergy and the lawyers imbibed their slavish notions from their studies in the civil law (*quod principi placuit legis habet vigorem*), which rendered them indulgent to the usurpations of military despots. The priests imported further from their theological abstractions, the absurdity of the “ right divine” to govern wrong.

Even under the Norman princes, Bracton, himself a judge, at the end of the reign of Henry 3, lays down broadly, the essential doctrine of the limitation of the prerogative by statute:—“ The King,” he says, “ made by the law, can do nothing on earth, being the minister of God, but what he can do by law” (*a*). Nor is, what is said in the Pandects, any objection; “ that whatever the prince pleases shall be law;” because by the words that follow in the text, “ it appears to design, not any mere will of the prince, but that which is established by the advice of his counsellors, the King giving his authority, and deliberation being had upon it.” “ This passage,” observes Hallam (*b*), “ is undoubtedly a misrepresentation of the famous *lex regia*, which has ever been interpreted to convey the unlimited power of the emperor over the people; but the very circumstance of so perverted a gloss put upon this text, is a proof that no other doctrine could be admitted in the law of England.” In another passage, Bracton reckons as

In the Norman Æra.

(*a*) Bracton, L. 1, c. 8. L. 3, c. 9.

(*b*) Hallam's Middle Ages, vol. 2, c. 8.

superior to the King, "not only God and the law, but his "court of earls and barons," (*magnum consilium*); "for the "former, *comites*, are so styled," says Bracton, "as associates "of the King; and whoever has an associate has a master," (who in part restrains him); "so that, if the King were un- "bridled," (without a bridle, that is the law); "they ought "to put a bridle upon him;" (by further statutory regulations).

It is true, that in this very reign, the practice of dispensing with statutes, by a *non obstante* clause, was introduced, in imitation of the papal dispensations. But the Bill of Rights, contains an incontrovertible declaration of what was the ancient law in this respect:—"That the pretended power "of suspending or dispensing with laws, or the execution "of laws, without the consent of Parliament, is illegal (*a*)."

The sweeping maxims of absolute power, which servile judges taught the Tudor and Stuart princes, seem to have made little progress under the Plantagenet (*b*) line. Some beneficial alterations were introduced among many changes of an arbitrary character, such as ascertaining the hereditary succession to the Crown. Five Kings out of seven, that follow William the Conqueror, were usurpers, according to modern notions. Who would have wished such uncertainty to continue? It was about the middle of the thirteenth century, that lawyers applied to the Crown, the strict principles of descent which regulate a private inheritance (*c*). Of the alleged prerogatives of the Crown, many of the more obnoxious were demonstrably rather plagiarized and usurped than allowed and recognized as prescriptive. And it was (*d*) opposed to the petitions of the people, to the acts of the Legislature, and to the testimony of historians and of lawyers, that England, wearied with perpetual contests and requiring intervals of repose, sometimes acquiesced in what she could not prevent. Yet gross abuses of feudal rights, scandalous fiscal exactions, the oppressive forest laws, purveyance and

(*a*) Bill of Rights, 1st and 2nd Articles.

(*b*) Hallam's Const. History, 1.

(*c*) Hallam's Middle Ages, vol. 2, c. 8.

(*d*) Ibid.

pre-emption, (*"detestabile illud nomen!"*) were ever loudly protested against, by the natives; impotent as is such resistance!

There is much to excite the imagination, much that is generous and grand, in recitals of crusades, "hermit-led;" of expeditions of "red-cross knights" to succour the oppressed; in stirring pictures of "lion-hearted" kings, "begirt with "barons bold:"—but it devolves upon the legal historian, to notice also the dark side of the picture—the romance, and the rapine of the age! Think of a requisition upon a secluded manor, to furnish 5000 eggs, 200 hens, 200 capons, 40 sheep, 20 beeves, 500 shoes for the King's horses, &c., and these paid for with tallies, which were carried in vain to an empty exchequer. And imagine the satisfaction of the villagers on such an occasion, with the assurance of all the lawyers, that the prerogative of the King "was only "given for the benefit of the subject."

In the Parliamentary Rolls in the time of Edward 1, is found an Ordinance of the King and his Council for the seizure on purchase, of 8000 sacks of wool, to be sold on the King's account, and the owner to be reimbursed from the proceeds of a pretended grant by Parliament (*a*). Soon after we meet in the Parliament Roll, with a heavy tax imposed on the clergy, by the same defective authority, with the insulting remark, that "as they did not fight for the "state, it was but fair that they should contribute largely "to its necessities" (*b*).

The Conqueror, towards the close of his reign, had extorted large sums from his subjects, under pretence of law. Madox, from the Exchequer Rolls of Henry 2, and his two sons, exhibits a most frightful picture of judicial iniquity.

There were no contrivances for obtaining money, so mean or unjust, that Henry 3 disdained to practise them. That prince granted "pardons" for money. Tenacious as were the Norman princes, in general, of the Forest and Game Laws, Henry 3 sold the rights of Warene; proclaiming in market towns, that it was purchaseable by any who would

(*a*) Record Commission.

(*b*) Edinburgh Review.—(*Allen*).

buy it for money. False charges were repeatedly made against the City of London, in order to extort money from the citizens (*a*). To punish the Londoners, when they were backward in advancing monies, a fair was established in Westminster, and the traders were compelled to shut up their shops in the City of London, while the rival fair lasted. Adopting from the Pope, the *non-obstante* clause, as before stated, Henry made a traffic of it in his Courts of Law, and sold injustice to all who were willing to pay for it!

But Edward 1 perceiving, that, while the old resources of the Crown were exhausted, and its foreign possessions departed, a new distribution of property had taken place, and led to a new distribution of political power, wisely looked for the supplies he needed for his foreign wars, chiefly to the citizens and burgesses assembled in Parliament; who, as they increased in wealth, became of growing importance, and were courted by both sides in the baron's wars. The Parliamentary Writ, 22 Ed. 1, had the remarkable introduction:—"That which concerns all, should have the concurrence of all; and common dangers should be provided against, by means furnished by all." The Commons acceded to the King's views, but in their turn, not unreasonably required, that simultaneously with their Parliamentary grants, all irregular taxation should cease, and that Parliament should be convened whenever the Crown wanted aid from the people: which was effected by the statute *de Tallagio concedendo*, &c., 25 Ed. 1.

Great, however, as were the encroachments, and shameful the exactions, in the times of the Norman and Plantagenet princes; tyrannical as were the Tudors, and absolute the Stuarts; the free* Anglo-Saxon spirit will be seen in

(*a*) Record Commission.

* Impositions, burthens, charges on every description of real property, may be traced in our laws, to the successive conquerors and lords of the soil: such are Norman *fin*es and Danish *heriots*, &c. To our German ancestors we are indebted for our Saxon immunities; and for the master principle of self-government, pervading all our institutions. "In each Teutonic population, the echevins, *judices urbani*,—" twelve in number, elected by the people, the judges of the people

every page of authentic history, to have struggled unyieldingly, against any enormous abuse of essential prerogatives, and against any unfounded assumption of new ones; and generally with ultimate success.

The next branch of our State Councils, was always composed of bishops and heads of religious houses (a). In the Saxon æra, most northern governments invited the superior ecclesiastics to their national councils; not upon feudal notions, which at that time, had hardly begun to prevail, but chiefly, as representatives of the church and of religion itself; next, as more learned and enlightened councillors, than the lay nobility; and in some degree, no doubt, as the rich proprietors of land held in frankalmoign, or by spiritual services. It is well expressed by Hakewill * (b), as the ground of their summons to Parliament, "that they might advise the Lords, what was the law of God,—that they might make their human laws answerable, or at least, not repugnant thereto."

The Lords spiritual.

After the Norman Conquest, it is generally understood that the spiritual lords sat in Parliament, only by virtue of certain ancient baronies, which they were supposed to hold under the King, and which were inalienable from the respective dignities; though Hody skilfully contends that they sat in a double capacity, as bishops and as barons; and Hallam thinks the former doctrine rather too contracted a view of the rights of the English hierarchy.

Their tenure.

The bishops were always exempt from doing homage for

(a) Hallam's Middle Ages, vol. 2, c. 8.

(b) Ancient Customs of England.

"in their district Courts, and their representatives at the several *placita*, had the power to make bye laws for their own clan." The principle of self-government, was every where distinguishable in the component parts of the state.—(*Palgrave*).

* "In the ancient Briton and Saxon Kings' days," says Hakewill, "the archbishops and bishops," (and he might have added, mitred abbots and priors;) "were called to the Parliaments or other assemblies of state, not so much in respect of their tenure, for in those days all their tenures were *frankalmonage*, but that they might best advise them what was the law of God, that they might, &c."—*Antient Customs of England*.

their baronies, but were bound to take the oath of fealty. This gives rise to a suspicion, that their tenure by barony, was at first a fiction of law and Norman kingcraft (*a*). They held their lands before the Conquest, free from all secular services, except the *trinoda necessitas*; “the brycg bôt,” “burgh bôt,” and “fyrd;” or contributions for keeping in repair,—the bridges and fortresses, and for the maintenance of the military levy. When the policy of the Conqueror converted the superior ecclesiastics into tenants *in capite, per baroniam*, they were of course, bound to attend the *curia regis*, which was then considered a burthensome office; and they became charged with the same obligations of military service as laymen. They did not willingly acquiesce in the alteration, but when in 10 Hen. 2, the immunities of the church were so much curtailed by the constitutions of Clarendon, it was expressly declared that the bishops should “hold their lands as baronies, and attend the “King’s court.” This was a legislative provision, and, with all due deference and sincere respect for Mr. Hallam, settles the question thenceforward. From that time the superior clergy had place and voice in Parliament only in respect of their temporal baronies. Accordingly, we find that the Prior of St. James at Northampton, having been summoned, (12 Ed. 2), was discharged, because he held nothing of the King by barony, but only in frankalmoign. The Abbot of Leicester had been called to fifty Parliaments, yet (25 Ed. 3) he obtained a charter of perpetual exemption, reciting that he held no lands or tenements of the Crown by barony, or any such service as bound him to attend Parliaments or Council.

Denials of the
Peerage to.

The next remarkable Parliamentary doctrine is the denial of the peerage of bishops. They are said to be “lords of “Parliament, but not peers; for they are not of tryal by “nobility.” *A non causa pro causâ*. The reason thus alleged, Hallam regards as very unsatisfactory. It is, indeed, utterly inconsistent with the former doctrine. For baronial

(*a*) Hakewill *ad. id.*

tenure, if *that* were the ground of the bishops' right to a place in Parliament, must have unequivocally distinguished them from commoners, since any one holding a barony might be challenged by a commoner upon a jury, as not being the peer of the party he was to try. On principle, and the doctrine of the earlier cases, the same constitutional writer forcibly contends, that bishops ought to be entitled, upon charges of treason or felony, to a trial by the peers. As for the common objection that they are not tried as peers, because they have no inheritable nobility, he says that it is very frivolous, since it takes for granted the precise matter in controversy;—that inheritable nobility is necessary to the definition of peerage, or to its incidental privileges (*a*). And he cites Archbishop Stafford's case, 15 Ed. 3, which case decided "that peers ought in every case to be tried by their peers, and *that* in Parliament, and in that instance "allowed the Archbishop to be arraigned in full Parliament." But Hallam nevertheless admits that the current of precedents, including the leading cases of Fisher and of Cranmer, sets with the overwhelming force of authority in the opposite direction.

Not of trial
by nobility.

A noble and learned writer, who has rendered better service to the Chancellors than to the Bishops, after delivering an opinion favourable to the retention of the prelates in the House of Lords, because they assist to infuse some fresh blood into that worn-out body! ("hereditary honours and wealth are so enervating," he says, "that it is necessary to infuse fresh blood from the Church, as well as from the law;") proceeds thus: "I rejoice that the Act for excluding the Bishops was condemned at the Restoration; and I trust that there will never be occasion for repealing the Act by which it was repealed" (*b*). What does this mean? What will constitute a sufficient "occasion" for again expelling the Bishops from the House of Lords? Is the tenure of the Bishops to be subserviency to popular clamour? instead of the honest and independent exercise of their high and solemn functions; the enforcement of civil

Act excluding
them from the
House of
Lords.

(*a*) Middle Ages, c. 8.

(*b*) Lord Campbell's Lives of
the Chancellors.

and political obligations with the sanction of religion; and the guardianship and protection of the *true* interests of the Church? Will not the hierarchy be tempted to exclaim:

*Non tali auxilio nec defensoribus istis
Tempus eget?**

The Lords spiritual consist of the two archbishops and twenty-four bishops of the Protestant Established Church of England, and four representative bishops of the Protestant Church in Ireland. At the dissolution of the monasteries, by Henry 8, they consisted also of twenty-seven mitred abbots and two priors. All archbishops and bishops are virtually appointed by the Crown.

The Lords
temporal.

The temporal lords consist of all the peers of the realm; (for it is pretended, as has been seen, the bishops are not such, but only lords of Parliament:) by whatever title † of nobility distinguished. Such are for

* The noble and learned writer has other praise; his claims are upon the lawyers. To Lord Campbell, the merit is due of having rendered tardy justice to Lord Chancellor Burnell, the adviser of our great law-giver Edward 1; a Chancellor whom Hume never mentions, and Reeves is unacquainted with. The noble and learned historian of the Chancellors is not equally happy in unplumbing *his* Lord John Russell and Serjeant Wilde; who, though rejoicing in distinguished names, are not equally memorable persons with the "crying Chancellor, Swithin," and other "Cancellarian mummies;" in the biography of whom, playfulness and good humour are blended with learning and research. And why is a graceful levity, to be held incompatible with the dignity of history? *Ridendo dicere verum, quid vetat?*

† "The ruins of antiquity," says Hakewill, "shew a perpetuity of nobility from the beginning of this island;" and he cites an old manuscript, written in the Saxon tongue (found also, in the *leges Athelstani—Wilkins*): "It was sometime in the English laws, that the people and the laws were in reputation; and then were the wisest of the people worship-worthy, each in his degree. If a Thane so thrived that he became an Eorl, then was he right forth an Eorl right worthy. If a Ceorle so thrived, that he had full five hydes of his own land" (about 500 acres), "a church and a kitchen, a bell-house and a gate, a seat and several offices in the King's hall, then was he thenceforth the Thane right worthy. And if a merchant so thrived, that he passed thrice over the wide sea, of his own craft, he was thenceforth the Thane right worthy.—But times," resumes Hakewill, "are changed, and we in them. Edward the Confessor bringing in the title of Baron from Normandy, Thane grew out of use, and the former became, in dignity and power, magnificent above the rest. As for Dukes, they were fetcht from long exile, and renewed by King Edward 3. Marquesses and Viscounts were altogethe brought in by King Richard 2d and Henry 6th."

England, by descent or creation, dukes, (*duces*): marquises, (lords of the marches or borders), earls, (equivalent to continental counts, *comites*, or companions of the King); viscounts, (*vice comites* subordinate to, and acting for, the great territorial counts); and barons, (royal Thanes, or superior tenants *in capite*), who, holding lands immediately of the King, were entitled to attend his court and council, and their descendants holding by the same tenure were ennobled by the dignity of barons. English Peers.

Then for Scotland, the Scotch peers *elect* for each Parliament sixteen representatives from their own body, who must be descended from ancestors who were peers at the time of the union with Scotland. Scotch Peers.

The Irish peers elect twenty-eight representatives for life from the peerage of Ireland. Irish Peers.

The number of the temporal peers is indefinite and may

Baro originally meant only a man (notwithstanding the learned etymology with which Spelman sets out—*Bapos pondus: latine graves viros*;) was afterwards a general name for all persons who had power of judicature, as *curia baronum*: then it was used instead of aldermen, for the chief men of cities, as it is still, for the judges of the Exchequer, and the representatives of the Cinque Ports. *Eorls*, or *ealdormen*, were men of birth, (*generosi*) opposed to *Ceorls*; but in this MS. of the Saxon times, Earl must be equivalent to a Royal Thane. A greater Thane was, however, only Lord of a hundred; a lesser Thane, Lord of a manor; an Earl, of a county. But Earl was not a title of office till the eleventh century, when it was used as synonymous with ealdorman, for governor of a county. "A titular Earldom without a Lieutenancy, " was irregular under the Norman kings."—(*Selden's Titles of Honour*, vol. iii, p. 638).

Seigneur, Barrington contends, does not, properly speaking, signify lord, but is only *Senior*. Under the patriarchal system of the Anglo-Saxons, the eldest was synonymous with chief: "The Senior directed " the affairs of the tribe."—(*Lappenberg*).

The inferior nobility and gentry of the Anglo-Saxons were *Sithcondmen*. The landless man of gentle birth, but without a territorial qualification, was compelled to find a lord who would accept his fealty. In the next degree, *socmen* (freeholders), were superior to *Ceorls*, and could "commend" themselves to what military leader they chose. "One who can go with his land wheresoever he " chooses," is the expression of Domesday.

Ceorls or villeins were divided into *Heorthfastmen* and *folghers*;—householders and labourers or common folk; a distinction which holds to this day. (*Unde derivatur*, "Old Fogie," from *folgher*; *quære tamen?*) The lowest order mentioned in old records is that of the "rascals."—(*Barrington*).

Peerage first territorial.

be increased at will by the power of the Crown, unless, as is the case with Ireland, the authority of the Crown is restrained by some provision of the Supreme Legislature (a), to which the King is an assenting party.

The right of peerage seems to have been at first territorial. Afterwards, when alienations grew frequent, instead of remaining appendant to castles, manors, &c., such dignity of peerage was confined to the lineage of the party ennobled; and instead of territorial became personal.

The writ of summons to him or his ancestor was then admitted as a sufficient evidence of the tenure. Hakewill says two things were observable of our Kings of the Norman blood; first (b), “that they granted an hereditary and successory perpetuity unto honourable titles, such as the titles of earldom and baronies, without any difference of sex at all; secondly, that William the First, King and Conqueror, bestowed dignities and honours according to his pleasure upon his companions, some of them connext and conjoined unto the fees themselves, that yet to this day the possessors thereof may seem to be ennobled even with the possession of the places only, as our bishops at this day by reason of their baronies, &c. He gave to Hugh Lupus the earldom of Chester, ‘*ad conquirendum et tenendum sibi et heredibus suis, adeo libere per gladium, sicut ipse Rex tenuit Angliam per coronam.*’—But the succeeding Kings more sparingly bestowed such dignities to be holden of them in fee, granting for the better and more honourable maintenance of their stock and honour the third part of the pleas of the country, which they in their charters call *tertium denarium*; so that he who received the third penny of any province, was called the earl of the same; and so by custom the women, the heirs male failing. But King Edward 1, favouring certain private men, more careful of their own surname than of their posterity, it was thought good by him to decree to

(a) By the fourth article of the Union, the number of Irish peers is subject to limitation.

(b) Ancient Customs of England, p. 99.

“ make fees to belong to men only. Ever since, in creating
“ any new earls or barons by charter, it is provided that it
“ shall descend unto the heirs male alone, the women
“ being quite excluded; while in creations by rescripts and
“ writs of summons, women, the heirs male failing, were
“ not in ancient time forbidden or imbarred, but that they
“ might be accounted and by name styled, honourable,
“ with the pre-eminence of the dignity and calling of
“ barons; and after they had borne a child, according to
“ the ancient favour of our laws and the custom of the
“ kingdom, graced their husbands also with the same
“ honour, and with the same by inheritance ennobled their
“ children, without the possession of those places from
“ which the dignities may seem first to have risen. For
“ fees and local possessions circumscribed by law, are
“ translated and carried from one family unto another, and
“ enrich the possessors thereof, but of themselves neither
“ bring nor take away nobility, either dative or native.”

The modern doctrine does not admit any right in the purchaser of a territorial barony (such as Arundel); to a writ of summons, or consequently to any privilege as a lord of Parliament. It is, however, agreed that the only baronies known for two centuries after the Conquest were incidental to the tenure of land held immediately from the Crown. Of these, only the more eminent, were afterwards summoned to Parliament by particular writs.

Formerly
claimed by
tenure.

When a summons had become the customary preliminary of a baron's coming to Parliament, it was a natural transition to look upon it as an indispensable condition. Tenure and summons were thus both essential to render any one a lord of Parliament, and hence a baronial tenure was required for the lords spiritual. But in course of time, the proof of tenure was dispensed with, and in 1669, in the case of the Fitzwalter peerage, the House of Lords declared that “ baronies by tenure having been discontinued for many
“ ages, were not then in being, and so not fit to be revived
“ or to admit any pretence of right of succession.” And recently in 1805, the same view was acted upon in the

Created after-
wards by sum-
mons.

case of the Barony de Ros. There is however, an earldom extant, which the ducal house of Norfolk enjoys by the feudal tenure of Arundel Castle,—by special act of Parliament.

By writ.

The ancient, temporal Peers are supposed in the books, to have been intermingled with persons who held nothing of the Crown by barony, but attended solely by virtue of the King's prerogative, exercised in the writ of summons. These have been called barons by writ, but it is extremely difficult to distinguish *such* from the territorial barons. Husbands of baronial heiresses were summoned in their wives' right, but in their own names, as *ex gr.* "Sir John Oldcastle, summoned as Lord Cobham;" or they sat as tenants by the courtesy, after the death of their wives; so as to make it difficult to distinguish, who sat by tenure and who were called by writ.

Query: Peers
for life?

It appears very doubtful what was the effect of the writ, when the party summoned, was not before, a baron by inheritance; but was summoned, as Elsynge expresses it, *ratione tenuræ tantum et non nobilitatis ergo* (a). Elsynge, who contends against the writ of summons conferring an hereditary nobility, is of opinion that the party summoned, was never omitted in subsequent Parliaments, and was consequently a peer for life. "Once summoned to Parliament, the holder *per baroniam*" (the clerk of the Parliament says) "was not omitted during his life. For the King would not dishonour him whom he had honoured." But Hallam considers it as established from Prynne's later researches, that many laymen were summoned only once to the House of Lords, whose names never occur afterwards. And certainly, before they were consigned to the sheriffs, it seems to have been always held, that the *secundæ dignitatis barones*, or inferior tenants *in capite*, might be omitted *ad libitum regis*.

It has been settled in Lord Abergavenny's case (b), and since by repeated precedents, that an hereditary nobility is not acquired by the Writ of Summons; that no one is en-

(a) Manner of holding Parliaments in England, 53.

(b) 12 Co. Rep. and Collins, p. 61.

nobled by the mere summons, unless he has rendered it operative, by taking his seat in Parliament; distinguishing it from a patent of peerage, which requires no act of the party for its completion. On this account the most usual, because the safest, way, to confer the dignity of the peerage is, by patent: though it is still frequent to call up the eldest son of a duke, marquis, or earl, to the House of Lords, by writ of summons, in the name of his father's barony; because there is in that case no danger of his children losing their nobility; but such writs do not create heritable peerages. If indeed, the barony do not turn out to be vested in his father, the writ is deemed a new creation.

By Letters
Patent.

Creation by writ has one advantage over that by patent, that a person created by writ, holds the dignity in tail to him and his heirs, without any words to that purport in the writ, while in letters patent, the person created, must have the inheritance limited by apt words, otherwise he shall have no inheritance.

The next method of conferring an honour of peerage, was by creation in Parliament "*in pleno Parlamento*;" or "by the request of the Lords and Commons to the King."

By statute.

The modern form of creating peers by letters patent, was nearly allied to the last mentioned method, by act of Parliament. In the earlier instances, the assent of Parliament was usually expressed, either in the patent, or on the Parliament roll. Earls had always charters;—and barons sometimes patents; but Elsynge says, that earls and barons were created such, by the ceremony of investiture; which made the peerage inheritable even to the heirs general. It was at that time, deemed necessary to invest with robes the newly created baron in open Parliament; but in 13 James I, it was determined to discontinue those ceremonies in future; it being held that the delivery of letters patent, constituted a sufficient creation. And in the patents of more modern times, the ceremony of further investiture, is expressly dispensed with.

By patent.

By investiture.

The creation by patent is a royal grant to a subject of

Vocation of
the Lords.

any dignity and degree of peerage. It was first introduced 11 Rich. 2, by some slight stretch of the prerogative, which that King was ever attempting. By these various methods have peers been created. Their hereditary titles have been long held, to confer a right to sit in Parliament.

Have the Lords in Parliament at all times rightly comprehended their vocation? have they been true to their mission? have they legislated generally and not partially; for a nation and not for a class?—have they employed the dignified leisure they possess,—the senatorial calm they enjoy,—in originating or maturing improvements in the laws and institutions of the country?

But this is not all, that is expected from an institution, which, it is believed, feels its rights and is determined to execute faithfully all its duties. The House of Lords, (that House “which never changes, which never ends:”—as was eloquently said by M. Guizot of the French Chamber of Peers), from the permanent character of its position is bound to comprehend—how the policy of conservatism can be reconciled with the changing wants and wishes of the country.

In the earliest periods of our juridical, as well as national history, (drawing our inferences from the records and statutes relating to the baron's wars); we must arrive at the conclusion that the Kings of those days were arbitrary and tyrannical, and the contemporary barons turbulent and lawless.

In course of time, as the Commons grew into importance, it will be perceived that the barons had, in common parlance, quite enough to do. They had to curb the extravagant flights of their martial kings in their passion for foreign wars, by which this kingdom was impoverished; to pull down the pretended “monarch” from his usurped sole authority; and, at the same time to keep down the people, who were rapidly advancing in their demands.

In later ages, the Lords have been sometimes represented as unduly opposed to beneficial changes. The resolution of the barons recorded in the 9th Chapter of the Statute

of Merton, is regarded, and often triumphantly cited, as a powerful and explicit declaration on the part of the barons, against innovation. Now, of those sturdy barons, who thundered at Merton, *quod nolunt leges Angliæ mutare*,* it is fair to observe, that the alterations proposed to them upon that occasion, were not such as left the substance of our laws entire and unchanged, and made only seasonable changes in certain of their provisions; but the question regarded a total change of system (in one particular); and the substitution of the rule of the ecclesiastical canons for the law and custom of the realm. These were constitutional and organic changes, upon which the Lords of Parliament might justly, even if not wisely, make a stand.

In the same statute (of Merton) in almost the next chapter, is found a detailed statement of Legislative measures proposed by the Lords. According to this account, the barons gravely preferred a moderate request, that *Magna Charta* might be infringed in almost every possible particular. Their petition had three branches:—1st, “That they might “imprison all such persons as they should take in their “parks and vivaries;” which was in express violation of the golden words of *Magna Charta*, “that none should be taken “or imprisoned, but by the law of the land.” 2nd, “That “they should have *propriam prisonam*,” a prison of their own, which no subject can have; for all prisons are the King’s; but a subject may have the custody or keeping of them. 3rd, “That the offender should not be imprisoned “in the common gaol.” All which attempts of the barons, “*dominus rex contradixit*.”

Thus did the barons who had extorted *Magna Charta* from the Crown, themselves endeavour essentially to alter, in their own favour, the established law of the land solemnly and deliberately enacted both in the same and in the preceding reign. Other instances can be adduced, in which the Lords have been selfish, perverse and unyielding, have

* To be sure it rather detracts from the dignity of the occasion that the contest was with priests, and the subject bastardy.

resisted improvements and aimed at the restoration of abuses. Thus,

1. They pertinaciously retained their conusance of the offence of theft in inferior local jurisdictions (*infangthef and utfangthef*, &c.,) insisting on their franchises, in defiance of *Magna Charta*; and aimed, as has been shown, at imprisoning whom they pleased, in their own *donjons* and keeps.

2. Through all the reign of Richard 2, they blindly opposed themselves to the advancing intelligence of the country, and the changes manifestly preparing in the state of society, with no other result than the destruction of the King and the elevation of the popular favourite to the throne. In the 15th Richard 2, the barons petitioned that "no villein might send his son to school;" the King gave the proper and dignified answer: *Le roy s'avisera*.

3. They were engaged in constant opposition to the introduction of improvements from the civil and canon laws, and in disputes with the Ecclesiastical Courts; and there is no doubt that they were the aggressors in those disputes. They talked of "removing land-marks;" while the temporal Courts were encouraged in constantly making encroachments on the acknowledged ecclesiastical jurisdiction. Courage was wanting to declare at once openly, by the voice of Parliament, that such jurisdiction, (extending to the most important concerns of human life), was unsatisfactory, and its methods of proceeding inconvenient.

4. They resisted all attempts to unfetter estates tail by a repeal of the statute *de donis*. Lord Coke says (a), "Divers bills were exhibited for the purpose, which I have seen; but these measures were all rejected; entails being favourites with the nobility." The object was only effected at length, by what Blackstone calls "the *finesse* of the judges!"

5. In passing the 5th and 6th Edward 6, c. 16, to prevent the sale of offices connected with the administration of justice, the Commons for a considerable time insisted on

(a) 6 Rep. 40, b.

the omission of that clause in the Act, which allowed the two chief justices to sell certain offices, but the struggle was ineffectual.

6. When Lord Keeper Littleton, (*morbo proditor*), carried off the Great Seal to York to Charles 1st, the Parliamentary leaders were thrown into great consternation, as the King could issue whatever grants, commissions and proclamations he thought proper, whilst they could not even have new elections, to fill up vacancies in the House of Commons. And the administration of justice was suspended, as no writs of error could be brought in Parliament. It was wisely and vigorously proposed by the Commons that a new Great Seal should be prepared. But the Lords were wanting in decision; they were not found equal to the occasion; their conduct was equivocating, stupid and dilatory. At length, after much opposition from the Lords, a new Great Seal was ordered to be made. Hallam observes upon these formal and feeble proceedings: "The Great Seal, in the eyes of English lawyers, has a sort of mysterious efficacy, greater than the person of the sovereign." Now, the truth is, that the lawyers had much more fear than reverence in their cautious proceedings. They went on the ground that it was expressly enacted in Stat. 25 Ed. 3, that to counterfeit the King's Great Seal shall be high treason. And, therefore, according to formal precedent, an ordinance was duly passed to make it high treason to counterfeit the Republican Great (a) Seal. After all, James 2 attached more importance to the Great Seal than the lawyers, when he threw it into the Thames, to defeat the schemes of the Prince of Orange.

7. When military tenures were abolished, the measure was opposed in the Upper House; Lord Keeper North (b) looked with horror on the innovation, and said he had no doubt it would be a fatal blow to the liberties of the subject!

8. On passing the law directing all proceedings in Courts of justice to be in the English language, the bill was

(a) Scobell's Acts, A. D. 1649.

(b) North's Life of Lord Keeper North, vol. 1, p. 209.

resisted by the *Magnates et Proceres* in almost all its stages; confusion, delay, fraud and injury, were predicted for its consequences; and the law lord of the day, Lord Raymond, opposed it with a joke, which drew upon him the indignant rebuke of the great Argyle (a).

Other and familiar instances of measures questioned or rejected by the Lords, belong to the province of history. Enough has been exhibited from the records of Parliament, to show the barons legislating in favour of their own class, and disregarding, impugning, and endeavouring to set aside *Magna Charta*, in their own cases. At later periods, we often see them wilful, obstinate and wrong; resisting and preventing seasonable reforms, "the pruning and "grafting of the law." Yet it will be found that salutary improvements have nevertheless been effected eventually, in those precise cases, with or without their concurrence; the latter accomplished with the aid of the judges, by interpretative legislation.

Other instances occur of the delay of supposed ameliorations, by the doubts of noble lords whether the changes could be effected with safety; by, perhaps, an excess of caution and deliberation in members of the Upper House, occurring in the independent exercise of their legitimate functions. But such mild obstructiveness is not a case to justify the "perilous innovation of a rooting up and planting again." One memorable instance excepted, it has never been thought necessary to facilitate improvements by abolishing the House of Lords and re-organizing the Constitution.

The true principle of action in this deliberative body, the supreme branch of the Legislative Council, is well considered, temperate, progressive reform. In the House of Lords, at present, all business is admirably conducted, and the most enlarged knowledge, and the most consummate ability, are frequently displayed in debate. On more than one occasion, in modern times, has the country seen reason to be thankful that it has still a House of Lords, "which

(a) Parl. Hist. vol. 8. Lord. Journ. vol. 10, May.

“never changes, which never ends.” And moreover, there are reasons why the Lords should proceed deliberately and with caution, in the grave task of legislation. Instances are not wanting of a compelled recurrence to the old law, after certain rash and unconsidered changes. The statute passed against usury in the reign of Henry 8, was repealed in the time of his successor; but an act of Elizabeth, reciting that the repeal “had not done the good it was hoped it should; but that the vice of usury, and specially by way of sale of wares and shifts of interest, had more exceedingly abounded,”—revived the former act by which the mischief had been well suppressed. The Statute of Fines, passed to remedy the endless litigation occasioned by the Statute of Non-claim and to restore to Fines, “their former force and validity,” is another well known instance of recurrence to the ancient law.

The Report of the Lords' Committee on the dignity of a Peer, describes the whole body of the peerage; first, as possessing individually, titles of honour, giving them respectively rank and precedence; secondly, as being individually, hereditary councillors of the Crown; thirdly, as being collectively, (together with the spiritual lords), when not assembled in Parliament, the permanent Council of the Crown; fourthly, as being also collectively (together with the spiritual lords), when assembled in Parliament, a Court of Judicature; and fifthly, as having for a long time, formed, with the Commons, when convened in Parliament, the Legislative Assembly of these Kingdoms (*a*).

Dignity of
Peerage.

By Standing Orders of the House of Lords, it is declared with regard to peers by descent, or by special limitations in remainder (*b*):—

“That all peers of the realm by descent, being of the age of one and twenty years, have right to come and sit in the House of Peers, without introduction.

“That no such peers ought to pay any fee or fees to any herauld, upon their first coming into the House of Peers.

(*a*) Report on Dignity of a Peer, 14. (*b*) Lords' S. O. No. 88, 89.

“ That no such peers may or shall, be introduced into the House of
 “ Peers, by any herauld, or with any ceremony, though they shall
 “ desire the same.

“ That every peer of the realm, claiming by virtue of a special
 “ limitation in remainder, and not claiming by descent, shall be
 “ introduced.”

Lords' assist-
 ants.

The constitutional assistants of the House of Lords, are the Justices of the Courts of Queen's Bench and Common Pleas, and the coifed Barons of the Exchequer; the Master of the Rolls; the Attorney General; the Solicitor General, and the King's Counsel, of the degree of King's Serjeants. The attendance of the Attorney General in the House of Lords is dispensed with, except in peerage cases.

The House of
 Commons.

The House of Commons, from the 49 Hen. 3, if not before, which is not ascertained, has always consisted of Knights of the Shire, or representatives of counties; citizens or representatives of cities; and burgesses or representatives of boroughs.

Knights of the
 Shire.

Knights of the Shire, *milites*,—cnihts, “ girt with swords;” are believed with reason and upon abundant authority, to have been originally the *secundæ dignitatis barones*; who Elsynge contends, (agreeing herein with the *Modus tenendi Parliamentum*) were properly called peers, being such *ratione tenuræ*, and so opposed to the barons by inheritance; “ much land being in the hands of private men held *per baroniam*, without their being reputed barons.” It would appear indeed, by the (a) *Modus tenendi Parliamentum*, giving to that authority at all times only its due, and now diminished, weight, that “ in the earliest times before the Conquest, the lords spiritual and temporal and their peers,” (*i. e.* says Elsynge (b), the King's tenants *in capite* who held lands *ad valentiam unius comitatus* (400*l.*) *vel baroniæ integræ* (400 marks) were summoned to Parliament by one general summons, while *minores clerici et minores laici non summoneri debent*; but if their presence were required, they received particular writs. But this practice, if it ever obtained,

(a) p. 56.

(b) Elsynge, p. 53.

which does not very satisfactorily appear, did not long continue; for we find in *Charta Regis Johannes*—"submoneri"
"faciemus omnes archiepiscopos, episcopos, etc.; comites et
"barones regni nostri singulatim, per literas nostras;" while it runs—"summoneri in generali, per vicecomites et ballivos"
"nostros, omnes alios qui in capite tenent de nobis."

By this important change (whether first adopted by John, or introduced at any time anterior), two decisive innovations were produced in the condition of the inferior barons. First, it was established, that they should be summoned generally by the sheriff, instead of receiving their particular writs, (which made an honorary distinction in favour of the Parliamentary barons); and secondly, that they should pay relief, not as for an entire barony (one hundred marks); but at the rate of five pounds for each knight's fee which they held of the Crown. This changed their tenure from one by barony, to one by mere knight's service. Ceasing thus, to be summoned as peers, they were allowed and sometimes directed, to be returned as Knights of the Shire—and thus sat by representation in the Lower House.

County members were at all times, elected in the County Court, by those who owed suit and service in that Court. And those were, land-owners,—of free and not of base or servile tenure; in other words, freeholders. Sharon Turner, indeed, believes it to have been nearly the same in the Anglo-Saxon times. "As all the *milites*, *cnihts*, or "secondary thegns," he says, "were too numerous to be "admitted into the *Witan*, those who were present,—came "not upon any personal right of being members; but, "as the elected representatives of others of their class, or "of all the freeholders of the county."

County members.

"To the citizens and burgesses of Parliament," says Turner, "analogous remarks are equally applicable." We may find no existing writ ordering their election earlier than the 22nd year of Edward 1, but the want and probable loss rather than designed destruction of the preceding records, is no proof of their non-existence. There is nothing in the earliest writ extant, that marks such writ to have been the commence-

Citizens and Burgesses.

ment of the custom. All historians and antiquaries are agreed, that no notice is any where taken of an innovation so momentous, as such novelty had been ! No surprise is expressed,—no remonstrance uttered. Accustomed to see the “town good men” attend the National Councils to discharge judicial functions, and occasionally to express their assent, when there was a vote of money required, and taxes were to be imposed ;—as this demand upon their time grew more frequent, and at last, habitual, their regular convocation to the Parliament seems to have been looked upon by the people as a necessary consequent—and to have attracted no attention. Turner, indeed, believes that the sending representatives of cities and boroughs to the *Witen-a-gemot* or *Commune Concilium*, when it was intended that the cities and boroughs should contribute to the taxation, was the “ancient immemorial right of all burghs and cities, beginning with their existence, constitutionally attached to it, and not flowing from any specific grant.”

Mission of the
Commons.

And here it may be observed, that the claim to the right of imposing taxes in the same manner as in the Saxon times, when deputies were sent for that express purpose, furnishes an explanation why all taxation and imposition of charges upon the subject, begins in the Lower House ; which Blackstone justly observes, is not satisfactorily accounted for, as the reason is usually assigned. It is said, that the representatives of the Commons are the proper persons to tax themselves ; which would be unanswerable, if they taxed nobody but themselves, but they also tax the Lords. It is, indeed, in order to provide the supplies, by the imposition of taxes, that the Commons assemble. The grants of aids and supplies, and the limiting the purposes for which they are granted ;—with the comprehensive functions of the Grand Inquisitors of the Realm, compose their mission.

The result of an impartial and dispassionate investigation into the origin and history of popular representation, as respects citizens and burgesses, is to arrive at a conviction that chosen, staid men, from cities and burghs, were from the earliest times, occasionally and specially con-

vened to make grants of aids and subsidies, and to concur in decisions on grave emergencies; such as a dispute between the King and the clergy: as for example, when the King (Henry 2), at Northampton, exacted from the earls and barons "their judgment of the Archbishop (Beckett); and "sheriffs were called in, and barons of the second dignity "and ancient in days, that they might be added to the "lords and be present at the judgment."

But at how early a period these "ancient in days"— "*seniores et sapientiores populi*," were regularly summoned to sit and vote in Parliament, and to take a part generally in the deliberations, is a fact not now ascertainable, but left in impenetrable obscurity and doubt. It is probable that the effectual working of the present complicated system, was brought about gradually and in the course of years: the principle was certainly known and familiar, and the machinery at hand, whenever the increasing necessities of the King or of the dominant barons seeking to coerce the Crown, called for extraordinary aid.

England and Wales jointly, return 500 members to the House of Commons. The number of members for Scotland, which was fixed on the union of that kingdom with England, at 45, has been increased by the Scotch Reform Act to 53. The Irish members were increased in number by the Irish Reform Act, from 100 to 105. The total number of the representatives of the United Kingdom of Great Britain and Ireland is, (and also was before the Reform Act); 658.

It is not within the design of this work to refer to the constituencies,—the rights of voting,—and qualification of voters, or to the mode of election. How elected.

These several powers of King, Lords, and Commons, (succinctly not perfunctorily treated); collectively compose the Supreme Legislature; and when regularly assembled in full Parliament, make laws that are binding upon the whole empire.

And next of the assembling of Parliament: Among the constitutional prerogatives of the King, none are more Parliament,
how convened.

By the King
alone.

important or fundamental, than those connected with the Legislature. It is an undoubted branch of the royal prerogative (a), that no Parliament can be convened by its own authority, or by the authority of any, except the King alone. Of the great corporation or body politic of the kingdom, the King is said to be *caput, principium et finis*. For, upon their coming together, the King meets them, either in person or by * representation, without which there can be no beginning of a Parliament, and he alone has the power of dissolving them. As Parliament cannot begin without the presence of the King, either in person or by representation, so says Lord Coke, it cannot end or be dissolved, but *eo ligamine quo ligatum est*. (b).

How often.

By ancient
statutes once
every year.

But this general prerogative of the King as to the commencement and continuance of Parliaments, has been frequently restrained by particular statutes. By the more ancient (c) statutes of the realm, the King was bound to exercise such his prerogative "every year, or oftener if "need be." This provision indeed was perverted in construction and constantly disobeyed, though the true doctrine was repeatedly recognized, and it was emphatically declared in the Act 16 Charles 1, that "Parliaments ought to be "holden every year for the redress of grievances; though "the appointment of the time and place belong to his "Majesty." Charles 2 procured the repeal of this Act as, (so his tools said), "derogatory of his Majesty's just rights "and prerogative." Yet by the statutes still in force of 16 Car. 2, c. 1, and 6 Wm. & Mary, c. 2, it is enacted, that "The sitting and holding of Parliaments, shall not be "intermitted more than *three* years at the most." There is

(a) 1 Bl. Comm. 150.

(b) 4 Inst. 2.

(c) 4 Ed. 3, c. 14. 36 Ed. 3,
c. 10.

* Whenever a Parliament was sitting in the King's absence, "there "was always, as appears by precedents, a *custos regni*, or a *locum* " *tenens regis* appointed."—*Rushw. Coll.* vol. iii, part 5, p. 772. But the appointment of Lords Justices, which succeeded the *custos*, for the exercise of the royal authority during the absence of the sovereign abroad, is now held not to be necessary in point of law, but to resolve itself into a question of expediency. Per Lord Lyndhurst.—*Hansard*, vol. 82, p. 1514.

a slight difference between the provisions of these Acts; but having stated the effect of the most extensive of them, this brief mention of the subject will suffice; for the Mutiny Act, and the Land Tax, and Malt Tax Acts, being passed for one year only, Parliament must now, necessarily be summoned for the dispatch of business once every year.*

There is one case in which a Parliament cannot be summoned and called by the King; and that is, in the event of a demise of the Crown, when there is no Parliament in being. In such case, it was formerly provided, by statute 6 Anne, c. 7, s. 6, that "In case there is no Parliament in being at the time of such demise, that hath met and sat, then the last preceding Parliament shall immediately convene and sit in Westminster, as if the Parliament had never been dissolved." By a Parliament that "had met and sat," Mr. Hatsell says, was always understood, a Parliament of which a session had been held, *i. e.* where a bill had passed both Houses, and received the royal assent. For, when the Parliament meets and passes a bill, those combined acts make a session. "If no statute be passed and no judgment given, it then is styled a convention and not a session;" so declared by King James 1, in his † Commission for dissolving the Parliament in 1614. Accordingly, when Queen Anne was thought to be dying, and again in 1754 and in 1768, it was deemed prudent for the Parliament to meet immediately on its election, to pass a bill.

Exception to the rule of the King calling the Parliament together.

A session, what.

That part of the statute of Anne, which caused all this embarrassment, and from which, a consequence very different from the intention of its framers might have resulted, is now repealed, and the inconvenience guarded against by 37 Geo. 3, c. 117, which provides:—"That, in the case of the demise of his Majesty, subsequent to the dissolution of a Parliament and before the day appointed for the

Provision in case of demises of Crown, when no Parliament in existence.

* When the Parliaments were sessional, the Commons used to grant subsidies *ad biennium*; afterwards for six years; but Madox justly questions their right.—*MS. Brit. Mus.*

† "*Pro eo quod nullus regalis assensus per nos præstita fuit, nullum Parliamentum, nec aliqua Sessio.*" On this declaration of the King, Lord Bacon consulted Mr. Selden, whether the judgment given against him (Lord Bacon) in this convention could be valid. The sound advice given must have been, not to stir so foul a business!

“ assembling a new one, the last preceding Parliament shall
 “ immediately convene, and sit and continue during the
 “ space of six months, but subject to be sooner prorogued
 “ and dissolved.” And so in like manner, “ in case of the
 “ demise of a successor to the Crown, within the said period
 “ of six months without his having dissolved the Parliament,
 “ or after the same shall have been dissolved and before a
 “ new one shall meet, the said last preceding Parliament
 “ shall convene and sit and continue for six months longer.”

“ And in case of the King’s demise, on or after the day
 “ appointed for the assembling of a new Parliament, such
 “ new Parliament shall convene and sit, and be a Parlia-
 “ ment to all intents and purposes, to continue during the
 “ term of six months.”

How long
 summoned be-
 fore it begins
 to sit.

When the Crown, by the advice of its responsible ministers, determines to call a new Parliament, none at the time being sitting, the Chancellor is required by warrant to issue the customary writs. For Parliament was regularly to be summoned by the King’s writ, or letter, issued out of Chancery, at least forty days before it began to sit. Such is the provision of Magna Charta:—“ *Faciemus summoneri, etc. ad certum diem; scilicet ad terminum quadraginta dierum ad minus, et ad certum locum;*” (a) and this was enforced by 7 & 8 W. 3, c. 25, which enacted, that there should be forty days between the *teste* and the return of the writ of summons. But this time was varied by the twenty-second article of the Act of Union with Scotland, which required *fifty* days between the *teste* and the return of the writ of summons for the first Parliament of Great Britain; from which date the latter extended period was adopted, and has continued to be the uniform practice.

Fifty days.

Warrant.

The warrant for issuing the writs is general (b), and does not contain any directions to the Chancellor, whom he shall summon,* though it appoints a day and place of meeting *ad*

(a) Bl. Mag. Carta, Joh. 14.

(b) Elsynge, 31.

* It is observable, that in the case of summoning prelates and barons to Great Councils, the practice was different. Upon such occasions the Chancellor had not a general warrant, but an appointment whom he should summon.—*Elsynge*, 64. “ *Rex de avisamento*

certum locum; without which, the summons would be nugatory. It is to this effect:—"Whereas, we, by our council, "for certain great and urgent causes concerning us, the "good estate and commonwealth of this our realm, and of "the Church of England, &c., have appointed and ordained "a Parliament to be holden at our city of Westminster, the "first day, &c.; in which case divers and sundry writs are "to be directed forth under our great seal, &c. Wherefore, "we will and command you forthwith, upon the receipt "hereof, and by warrant of the same, to cause such and so "many writs to be made and sealed under our great seal "for the accomplishment of the same, as in like cases hath "been heretofore used and accustomed, &c." "It doth "not appear," says Elsynge (*a*), "by the first record of "summons now extant, an. 49 Hen. 3, by what warrant "the Lord Chancellor caused the writs of summons to be "made. The King was then prisoner unto Mountfort, his "sometime minion. But surely," the good clerk proceeds, "none but the King can summon the Parliament, and this "is the reason that Henry 4, having taken his liege lord, "King Richard 2, prisoner, on the 20th day of August, did "cause writs of summons for the Parliament wherein he "obtained the Crown, to bear date the 19th day of the said "month, and the warrant to be *per ipsum regem et consilium*, and himself to be summoned by the name of Henry "Duke of Lancaster."

Such was the course formerly pursued when a new Parliament was called, none at the time being sitting. But now an order in council, commanding the Lord Chancellor of Great Britain to cause the great seal to be affixed to a proclamation for the dissolution of the existing Parliament, at the same time announces the royal pleasure for convening a new one, and is accompanied by the warrant or order for issuing the writs.

Modern mode of dissolving old Parliament, and calling new one simultaneously.

(*a*) Manner of holding Parliaments in England, 28.

"*consilii sui voluit, et mandavit custodi privati sigilli sui, quod literas separales sub eodem sigillo faceret, dominis supra dictis dirigendas in forma prædicta.*"—Vide ap. Sir Robert Cotton, an. 36 and 38 Hen. 6.

Writs of
summons.

Hitherto of the warrant—the next step is the summons. Under the authority of the warrant to the Chancellor, writs are issued immediately in the current form. For, as original writs at the common law can receive no alteration or addition but by act of Parliament, “so, *a multo fortiori*,” says Lord Coke, “writs of summons to the highest Court of Parliament are immutable, except by statute.” But now (*a*), by the Reform Act, it is very largely provided, that all writs shall be framed and expressed in such manner and form as may be necessary for the carrying that provision into effect (*b*).

The first writ of summons extant upon record, is that of 49 Hen. 3,* which, together with the form of the ancient

(*a*) 4 Inst. 9.

(*b*) 2 Wm. 4, c. 45, s. 77.

* “*Henricus, Dei gratia, rex Angliæ, dominus Hiberniæ et dux Aquitaniæ venerabili in Christo patri R. eadem gratia episcopo Dunelm, salutem. Cum post gravia turbationum discrimina dudum habita in regno nostro, charissimus filius Edvardus primogenitus noster pro pace in regno nostro assecuranda et firmanda obses traditus extitisset et jam sedata (benedictus Deus) turbatione prædicta super deliberatione ejusdem salubriter providenda, et plena securitate et tranquillitate pacis ad honorem Dei, et utilitatem totius regni nostri firmanda et totaliter complenda ac super quibusdam aliis regni nostri negotiis quæ sine consilio vestro, et aliorum prælatorum et magnatum nostrorum nolumus expediri cum iisdem tractatum habere nos oportet: vobis mandamus, rogantes in fide et dilectione quibus nobis tenemini, quod omni occasione post posita et negotiis aliis prætermisissis, sitis ad nos Londin’ in octavis sancti Hilarii proxime futuris; nobiscum et cum prædictis prelati et magnatibus nostris, quos ibidem vocari fecimus, super præmissis tractaturi et concilium impensuri: et hoc sicut nos et honorem nostrum et vestrum, necnon et communem regni nostri tranquillitatem diligitis, nullatenus omittatis. Teste meipso. 14 Decemb. an. regni nostri 49.*”

Item mandatum est singulis vice comitibus per Angliam quod venire faciant “duos milites de legalioribus et discretioribus militibus, etc.” Item in forma prædictur scribitur “civibus Ebor.” “civibus Lincoln,” etc., “quod mittant,” etc.

An. 5 Ed. 3, 18 Feb. “Rex vicecomiti Ebor. salutem. Quia propter quædam magna, et ardua negotia nos et ducatum nostrum Aquitaniæ ac alias terras nostras in partibus transmarinis, pro quibus ad easdem partes nuper solemnes nuncios nostros destinaverimus, contingencia quæ in ultimo Parliam. nostro ob aliquas certas causas terminari non potuerunt, Parliament. nostrum apud Westminst. die lunæ in crast. quindenæ Paschæ prox. futur. tenere et cum prælati magnatib. et procerib. dicti nost. regni ordinavimus habere colloq. et tractat. tibi præcipimus firmiter injungentes quod de dicto com. duos milites, et de qualib. civitate com. illius duos cives, et de quolibet burgo duos burgenses de discretioribus, et ad laborandum potentioribus eligi, et eos ad dictum

writ for the election of the knights, citizens, and burgesses, (an. 5 Ed. 3), is given at length in the note. These writs, 49 Hen. 3, and 5 Ed. 3, are chiefly remarkable as being special,* *i. e.* containing the cause of the summons, and also as giving the same† title and mandamus to the judges as to the lords.

For the judges (*a*) have to this day their regular writs of summons issued out at the beginning of every Parliament, *ad tractandum et consilium impendendum* (*b*) though not *ad consentiendum*; as have also (*c*) the Secretaries of State and the Attorney General, who (*d*), with the Master of the Rolls, used formerly to attend the House of Peers, (when the Lords were joined with the *consilium ordinarium*), and in the register (*e*) are called *attendants*, and by courtesy, *assistants*.

A valuable quality—an uncomputed working power in the members of the House of Commons, is also insisted on in this earliest summons, which is very deserving of notice. It is required that they shall be *ad laborandum potentioribus*. Yet a sixty-horse senatorial power would be inadequate to

(*a*) 4 Inst. 4.

(*b*) 1 Bl. Comm. 168.

(*c*) Hatsell, 28.

(*d*) Hakewill, 21.

(*e*) Regist. 261. F.N.B. 229, *a*.

“*diem et locum venire faciatis. Ita quod milites plenam et sufficientem potestatem pro se, et communitatem communitatis predictae et dicti cives, et burgenses pro se et communitatem civitatis et burgorum divisim, ab ipsis habeant ad faciendum et consentiendum iisque tunc de communi consilio (favente Deo) ordinari contigerint super negotiis ante dictis. Ita quod pro defectu huiusmodi potestatis dicta negotia infecta non remaneant quovis modo, etc., etc. Teste, etc. Per ipsum regem.*”

* So, however, were divers other writs of Ed. 1, Ed. 2, Ed. 3, and Rich. 2; but, for the most part, they were general, as at this day, and none special after the seventh year of Rich. 2.—*Elsynge*, 13.

† Barons and peers have never had any other title than *dilecti et fideles*, “trusty and well-beloved,” save that, after the French wars, some of them had the addition of *Chivaler*: the judges ever had the title of *dilecti et fideles* in their writs and retain the same to this day.—*Els.* 15. So, Hale: “the title of *Dominus*, in writs to the Lords, was, “in ancient times, very rare. But it was directed *Willelmo de Gray Chivaler*, because the King writes to none of his subjects by the name of Lord. But in Henry the 6th’s time this was altered in many cases; for divers of the nobility were summoned by the names *dominus de Say, dominus de Ferrers, &c.*”—*Jurisdiction of Lords*.

perform the duties, judicial as well as legislative, now imposed upon members, in committees, &c.

Writs of summons, according to Sir Matthew Hale, are of four kinds:

How many
kinds of writs
of summon.

1st. One to each bishop and each peer; "*quod etc. intersitis nobiscum et cum cæteris prælatis, magnatibus et proceribus prædictis, super dictis negotiis tractaturi vestrumque consilium impensuri.*"

2nd. One to each member of the *consilium ordinarium* (a); whom the King pleases to call as assistant; "*tractare nobiscum et cum cæteris de consilio nostro, vestrumque consilium impensuri.*"

3rd. One to the sheriff of each county, to elect knights of the shire, and burgesses or citizens for boroughs or cities; "*ita quod, &c., plenam et sufficientem potestatem ab ipsis communitatibus habeant ad consentiendum hiis que tunc per nos et dictos prælatos proceres et magnates ordinari contigerit.*"

4th. To the constable of Dover Castle, for choosing two barons for each of the Cinque Ports, &c.

Mandamus.

The result is: the lords spiritual and temporal, are to attend and to confer with the King and the other lords present on the matters referred to, and to give their counsel. The judges, &c., are to confer with the King and the rest of the council, and to give their counsel. The Commons are to come, with full and sufficient power to consent, unto that which shall be ordained by the King, with the advice of the Lords spiritual and temporal.

Lords summoned and in what manner.

Earls and barons were summoned, according to Elsynge, by reason of their inheritable nobility and tenure; their peers were summoned *ratione tenuræ*; archbishops and bishops *ratione episcopalis dignitatis et tenure*; abbots and priors, who held by barony, *ratione tenuræ*.* "Indeed,

(a) Hale's Juris. of Lords, 11.

* The officers, as the clerk of the Crown, the clerk of the Parliament, and the gentleman usher, attend *ratione officii*.—(Elsynge).

“ thither come,” says Hakewill (*a*), “ all lords of the Parliament, and they are summoned by the King’s writ ; but “ *separatim*, and not by a general writ * to the sheriff of the “ county, as the Commons are summoned, who are of the “ Lower House.”

Lord Coke expressly lays down (*b*), that any lord of Parliament ; either spiritual, as archbishops and bishops,—or temporal, as dukes, marquisses, earls, viscounts and barons ; peers of the realm and lords of Parliament, ought *ex debito justitiæ*, to have several writs of summons. It is observed by Elsynge, that, after diligent search, he could not find that any earl or baron being once created, had been omitted to be summoned, if he were of full age, stood *rectus in curia*, and were within the land ; unless he had so diminished his revenue, that he could not maintain† the state of his honours. Under *non rectus in curia*, however, the learned clerk includes, “ the titles being litigious, and the “ lord being restrained of his liberty, from being in the “ King’s displeasure ;—for then the writ of summons is an “ enlargement by law,—so resolved by the judges, and for “ that reason, would not be granted.” It has, it should be observed, been expressly (*c*) held by later authorities, on the

(*a*) Hakewill, 65.

(*c*) 12 Rep. 107 ; 12 Mod. 56.

(*b*) 4 Inst. 4.

* For forms of Summons, see Hakewill, 42, 44 ; Elsynge, 69 and 70.

SINGULATIM

Carolus, etc., Charissimo consanguineo suo, E. Comit. D. salut. Quia de avisamento et assensu consilii nostri pro quibusdam arduis urgentibus negotiis, etc.

IN GENERALI.

Rex Vice N. salutem. Quia de, etc., quoddam Parliamentum nostrum apud civitatem nostram West. 17 die Martii, prox. futuro teneri ordinavimus et ibidem cum prælatis, magnatibus et proceribus dicti regni nostri colloquium habere et tractare, tibi præcipimus firmiter injungentes quod facta proclamatione in prox. com. tuo post receptionem hujus brevis nostri tenendum die et loco prædicto duos Milites gladiis cinctos magis idoneos et discretos cum predict. etc. Et electionem illam in pleno Com. tuo factam distincte et aperte sub sigillo tuo et sigillis eorum qui electioni illi interfuerunt nobis in cancellariam nostram ad dictum diem et locum certifies indilate. Teste Meipso, etc.

† Such precedents cannot be produced of any earl ; for, at his creation, the King gave him for his maintenance the third penny of the county, which could not be aliened.

subject of a baron wasting his estate, that a peer cannot be degraded but by Act of Parliament.

At a later period, those lords who were "in the King's displeasure," had their summons, but with a letter from the Chancellor, "not to come, but to send their proxies." *Anno primo Car. 1*, the Earl of Bristol raised the point "whether such letter could discharge him from attendance, "the writ commanding him to come upon his allegiance?"* The point, however, was not decided.

But as no baron was ever omitted to be summoned being "within the land, *rectus in curia*, and of full age, so no "lord," says Elsynge, "hath been used to come to Parliament "till he hath received his summons;" but in case of none such summons arriving, he may, in such case, send to the Lord Chancellor for his writ; so the Earl Marshal declared his opinion in the case of Neville and Fane (*a*), 49 Eliz.

Before quitting this branch of the subject, it may be usefully observed, in illustration of the doctrines hitherto advanced, that it was objected (*b*), with great show of reason, to the Convention, or Healing Parliament, at the Restoration, that it wanted some of the sanctions and forms of the ancient constitution; inasmuch as, 1st, it originally met without royal authority; and 2dly, there was a defect in not summoning the Peers. The same irregularity occurred at the Revolution in 1688, and it was thought necessary for the succeeding Parliament to recognize the acts of the Convention.

The writs for the return of members of the House of Commons.

Writs for the return of members of the House of Commons are directed to the sheriffs of counties, or in places which are counties of themselves, to the returning officer, commonly, not necessarily, the sheriff also. There are certain exceptions to this rule; in the cases of the Bishop (*c*)

(*a*) Journal, an. 49 Eliz.

(*b*) See Hargrave's Preface to Hale's Jurisdiction of the Lords.

(*c*) Heywood's Borough Elections, p. 87.

* "*Vobis sub fide et ligeantia quibus nobis tenemini injungendo mandamus, quod consideratis dictorum negotiorum arduitate et periculis iminentibus, cessante excusatione quacunque dict. die et loco personaliter intersitis nobisc. et cum praelatis, magnatib. etc.*"

of the county palatine of Durham; the Chancellor of the duchy of Lancaster; the Chamberlain of the county palatine of Chester; the Constable of Dover; the Warden of the Cinque Ports, &c.

Formerly, writs went (a) at once, *civibus et burgensibus*, to “send two citizens,” &c. So not only *baronibus*, but also *probis hominibus quinque portuum*. Elsynge considers it worth the labour,—it certainly is a matter of curious inquiry,—to ascertain when the writs were progressively modified, or came to be differently directed. The convenience of having some determinate person to whom to address them, must have been early felt. Great mischiefs afterwards resulted from the negligence or partiality of the sheriffs, who returned whom they pleased; and according to the recital of the statute or ordinance 46 Ed. 3, sometimes *themselves*; for the counties of which they were sheriffs. The writ of 5 Ed. 3, it is worthy of remark, did not contain the clause, “*tibi præcipimus quod de dicto comitatu duos milites gladiis cinctos*,” &c. which was afterwards introduced 13 Ed. 3, in consequence of the request (b) of the Commons, “*que deux miels vauex chivalers de countez soient esluz et envoiez*,” to confer at the next Parliament, touching the subsidy demanded for wars, “*si que nul de eux ne soit viscount ne autre ministre*.” A direction was given in the writ for the election of knights *girt with swords*, but for *that* only. The project of excluding sheriffs and ministerial officers, though not accomplished at this time, was, however, not abandoned; and anno 46 Ed. 3, an ordinance was obtained, that neither (c) sheriffs nor lawyers should be returned knights of the shire; “but knights and serjeants of the best worth in the county, and chosen in full county.” As the mandatory part as to lawyers, extended beyond the evil recited, viz., the inconvenience felt from the absence of sheriffs out of their jurisdiction (d), no notice was taken of it; but the writ, when framed, received an addition touching the sheriffs only, which continues to this

Changes in writs traced.

Addressed first to the burgesses and citizens themselves.

Then to Sheriffs.

(a) 49 Hen. 3, ante.

(b) Elsynge, 72.

(c) 4 Inst. 25.

(d) Elsynge, 73.

Nolumus
clause as to
Sheriffs.

Extended in
Parliamentum
indoctum to
lawyers.

day, technically called the *nolumus* clause; “willing, “nevertheless, that neither you, nor any other sheriff of “this our said kingdom, be in anywise elected;” in terms, it will be observed, of much greater latitude than those used in the ordinance of Ed. 3. But, *anno* 5 Hen. 4, when an extravagant loan was to be exacted from the people, and it was, therefore, expedient to exclude a class of persons of superior learning, whose studies will naturally incline them to liberal opinions, the writ had this clause: “*Nolumus* “*autem quod tu, seu aliquis alias vicecomes regni nostri* “*prædicti, aut apprentitius, seu aliquis alius homo ad legem,* “*aliqua liter sit electus, &c.*” (a). But, by 7 Hen. 4, c. 15, on complaint of the Commons, it was enacted, that thenceforth elections should be free and indifferent, “*non obstant* “*aucun prier, ou commandement au contraire,*” which alluded indirectly to this unconstitutional prohibition (b). Yet at the trial of Charles 1, from intelligible motives, endeavours were made to put in force this exclusion of lawyers (c).

The 7 Hen. 4, c. 15, related to some changes in the election of knights of shires, but required no other alteration in the writ than the insertion of the clause concerning the return: “*Et electionem tuam in pleno comitatu tuo* “*factam, distincte et a parte sub sigillo tuo et sigillis eorum* “*qui electioni illi interfuerint, nobis in cancellaria nostra* “*ad diem et locum in brevi contentos, certifies indilate.*” These words being inserted in the writs of summons in such manner as to make them equally applicable to the election of citizens and burgesses as of knights of the shire at the county courts, gave rise to an irregular practice (d) of electing the members for cities and boroughs at the county court, along with the knights of the shire; sometimes all the persons there assembled voting for the citizens and burgesses, as well as for the knights of the shire; and at other times four burgesses from the respective boroughs attending and voting separately, for the two burgesses to represent their borough in Parliament.

(a) Elsynge, 74.

(b) 4 Inst. 10.

(c) 19 Parl. Hist. 226.

(d) 3 Prynne, 252, 253.

The 23 Hen. 6, c. 14, says that these acts of the sheriff were by colour of these words contained in the writs: "*Quod in pleno comitatu tuo eligi facias, pro comitatu tuo duos milites et pro qualibet civitate in comitatu tuo duos cives, et pro quolibet burgo in comitatu tuo duos burgenses.*" Sometimes, says this inculpatory act, the sheriffs made no return, but embezzled the writ; sometimes, they did not return such as were chosen; sometimes they returned those who were not chosen, and other citizens and burgesses, than those which by the mayors and bailiffs were to the sheriffs returned.

The inconveniences (a) arising from the misconduct of sheriffs, and in a great degree from this unwarrantable practice of their taking upon themselves to proceed to the election of citizens and burgesses, at the same time and place with the knights of shires, gave rise to the statute 23 Hen. 6, c. 14, which enacted that every sheriff, after the delivery of any such writ to him made, "shall make and deliver without fraud, a sufficient precept under his seal to every mayor and bailiff, &c. commanding them, if it be a city, to choose by citizens of the same city, citizens; if a borough, by burgesses of the same, burgesses, to come to Parliament:" and that the said mayors and bailiffs return the said precepts executed to the sheriffs, by indenture between them and the said sheriffs to be made; and thereupon every sheriff shall make good and rightful return of every such writ, and of every return by the mayors and bailiffs, or bailiffs where no mayor is, to him made.

Precepts how made necessary.

Before the reign of Henry 5, *all* freeholders of English counties, had a right to vote. But by a statute passed 1 Hen. 5, c. 1, it was provided "that the knights of the shire be not chosen, unless they be resident within the shire where they shall be chosen, the day of the date of the writ of summons to Parliament, and that the choosers shall be also, resident within the same shires." And by the 8 Hen. 6, c. 7, the right of voting was limited to persons "having free land or tenements to the value of forty shillings

(a) Heywood's Borough Elections, 120.

“by the year at the least, above all charges;” and both electors and candidates were required to be, as before enacted, persons dwelling and resident in the same counties.

The 10 Henry 6, c. 2, confirmed the two former Acts (*a*), restraining the right of voting to forty shilling freeholders, and providing that the persons chosen shall be *commorantes et residentes*, and chosen by such as are *resiants* (*b*) also; which two former Acts, and so much of the 23 Hen. 6, c. 14, as relates to the residence of persons to be elected members to serve in Parliament, or of the persons by whom they are to be chosen, are repealed by 14 Geo. 3, c. 58.

Since the 23 Hen. 6, the writs have continued nearly the same to this day; but may now be varied, where necessary, under the Reform Act, to effectuate the provisions of that statute (*c*).

How writs
issued.

Conveyed and
delivered, 1st,
for a new Par-
liament;

Writs of summons appear to have been issued from the earliest times by the clerk of the Crown in the Court of Chancery. The messenger attending the Great Seal was for a length of time the officer to whom the duty of conveying and delivering the writs was entrusted, with large discretionary powers, which enabled him to assist materially a favorite candidate, by the appointment of a friend to convey and deliver the writ. But now, by the 59 Geo. 3, c. 89, the messenger of the Great Seal must, on receiving the writs, forthwith carry such as are directed to the sheriffs of London and Middlesex, to the respective officers of those sheriffs: the rest he must deliver at the General Post Office, from whence they (*d*) must be forwarded, free of all charge, by the next post, to the officers to whom they are directed, and *to no other person whomsoever*, and such officers are to give a written acknowledgment, stating the day and hour of receiving the same. This receipt is transmitted to the Postmaster General, and by him entered in a book kept for the purpose, which may be inspected by persons interested in the election.

Within *three* days after the receipt of the writ, (in the

(*a*) 1 Hen. 5, c. 1, 8 Hen. 6, c. 7.

(*b*) Elsynge, 76.

(*c*) 2 Wm. 4, c. 45, s. 77.

(*d*) 59 Geo. 3, c. 89.

case of the Cinque Ports within *six* days), the sheriff (*a*) is to transmit his precept, under his seal, to the proper returning officers of the cities and boroughs. But if the officer, to whom the writ is first addressed, be not himself the returning officer, *he* transmits to the sheriff either the writ itself, or his precept thereon. And to make a valid election, the precept must be delivered (*b*), as well as directed (*c*), to the proper returning officer. For the making out (*d*) receipt, delivery, return, or execution of any writ or precept, no fee shall be paid or received.

On a vacancy during the sitting of Parliament, the writ issues under warrant of the Speaker by the authority of the House itself, and the proceedings are regulated by the 24 Geo. 3, c. 26. A former resolution of the House (*e*) upon this subject being rather equivocal, it was again and distinctly resolved, that the House had the power of ordering the writ to issue *from the first day of sitting whether actually sitting or not*. For in 1672, an attempt was made by Lord Shaftesbury (*f*), then Lord Chancellor, to arrogate to the Crown the privilege of issuing writs during a prorogation. This encroachment was successfully resisted by the Commons, and it is now an unquestioned part of the Speaker's office to sign warrants to the Clerk of the Crown in Chancery, to make out new writs for the election of members to serve in the room of members deceased, or of others, whose seats have become vacant from any other cause. This power was exercised for a length of time solely (*g*) under and by virtue of an order of the House of Commons, until, by stat. 10 Geo. 3, c. 41, the Speaker was enabled, during a recess, under particular limitations, to issue warrants for the election of members in the room of members deceased. By 15 Geo. 3, c. 36, this power was extended to the case of vacancies arising from members of the House of Commons becoming Peers of Great Britain.

2dly, in case of a vacancy in an existing Parliament.

(a) 7 & 8 Wm. 3, c. 25, s. 2.

(b) 4 Burr. 2267.

(c) 4 Inst. 49.

(d) 7 & 8 Wm. 3, c. 25, s. 2.

(e) 1580-1.

(f) 2 Hats. 213. 233.

(g) 2 Hats. 234.

By death or
elevation to the
Peerage.

Both the acts were repealed by 24 Geo. 3, c. 26, and by that act the Speaker is authorized and directed to appoint certain deputies for the execution of this part of his duty, in case of his death, or of his seat being vacant, or his absence out of the realm. If the House be actually sitting, the writ issues on the motion of a member. If not sitting, the course of proceeding by the latest provision enacted for the purpose, is as follows:—In case of a vacancy happening during a prorogation or adjournment, by death or elevation to the Peerage, on a written certificate of the fact by two members, the Speaker (*a*) having first given fourteen days' notice of his intention in the London Gazette, makes out his warrant to the Clerk of the Crown to issue out a new writ. But such writ cannot issue unless fourteen days would expire from the time of delivering the certificate, before the next meeting of Parliament. And these provisions have been (*b*) extended to any vacancy happening *previous to the recess*, provided the writ, under which the late member was elected, have been returned into the Crown Office fifteen days before the last sitting of the House of Commons, and on the further conditions, 1st, that there be time sufficient after the application, to allow the new writ to issue before the next sitting of the House; and also, 2ndly, that no petition against the election of the member whose seat has become vacant, was depending at the time of the last prorogation or adjournment. And even if no petition have been presented, it is to be (*c*) supposed that the House would not permit writs to issue for the election of new members, in the room of members dead or elevated to the peerage, till the time has expired which the House has limited for receiving petitions complaining of undue returns; though such provision has not been found (having probably been overlooked) among the restrictions under which this power of the Speaker is appointed to be exercised. Vacancies occasioned by the acceptance of office are not included amongst those which can be supplied during a recess.

(*a*) 15 Geo. 3, c. 36.

(*b*) 24 Geo. 3, c. 26.

(*c*) 2 Hats. 74.

By the 52 Geo. 3, c. 144, in the event of a seat having become vacant by the bankruptcy of a member, a like power of issuing his warrant, is given to the Speaker and his deputies.

By bankruptcy.

In the event of any mistake in issuing the writ from imperfect information, or of misdirection, or for any other adequate cause, such as a place by its corruption having incurred the displeasure of the House (as in the Hindon and Shaftesbury cases) (*a*), or where one of the returning officers was dead, and there was not time for the election of another, the House has authority to supersede a writ when issued, or to suspend its execution.

House can supersede or suspend a writ.

The new Parliament meets at the return day of the writ, unless the King is pleased to delay its meeting. For when it is not intended that Parliament should meet for the dispatch of business at the return of the writ of summons, the practice is to prorogue it by a writ of prorogation. Anciently (*b*) new writs of summons were issued, and another day appointed. But now, on the day upon which the writ of summons is returnable (*c*) not only peers, but members of the House of Commons, who choose to attend, without entering their own House, or waiting for a message from the Lords, go immediately up to the House of Lords, where the Chancellor reads, in their presence, the writ of prorogation. The writ of prorogation is a writ patent under the great seal, reciting the writ of summons (*d*), and tested before the day of its return, directed "*prelatis, magnatibus, proceribus hujus regni, ac militibus, civibus et burgensibus convocatis et electis ad hoc Parliamentum, pro quibusdam causis et considerationibus,*" &c. After the writ is read, the Parliament stands prorogued without further formality.

Parliament meets or is prorogued ;

if prorogued by what instrument.

When it is intended that the two Houses should meet upon the day to which the Parliament is prorogued, for the dispatch of business, notice to that effect is given by a proclamation, and such proclamation used to bear date at least (*e*) forty days before the day appointed for the meeting. But

When to meet, notice given.

(*a*) 4 Doug. 294.

(*b*) Elsynge, 87.

(*c*) 2 Hats. 310.

(*d*) 4 Inst. 7.

(*e*) 2 Hats. 312.

Within four-
teen days.

Another case
in which it
meets in four-
teen days.

On invasion or
rebellion and
supplementary
militia raised
and enrolled.

Begins, when.

Its jurisdiction.

by 37 Geo. 3, c. 127, reciting that it is expedient to shorten the time now required for giving notice of the royal intention that the Parliament shall meet for the dispatch of business—it is enacted that his Majesty may issue his proclamation for the meeting of Parliament for the dispatch of business, in not less than fourteen days from the date of the proclamation. And by 42 Geo. 3, c. 90, an Act for amending the laws relating to the Militia in England, and for augmenting the Militia—it is enacted, that “Whenever his Majesty shall “ cause the supplementary militia to be raised and enrolled “ or drawn out and embodied as aforesaid,” (*i. e.* in case of invasion or rebellion, s. 146), “ if the Parliament shall then “ be separated by such adjournment or prorogation as will “ not expire within fourteen days, his Majesty may and “ shall issue a proclamation for the meeting of Parliament “ within fourteen days, and the Parliament shall accord- “ ingly meet and sit upon such day as shall be appointed “ by such proclamation, and continue to sit and act in like “ manner to all intents and purposes, as if it had stood “ adjourned or prorogued to the same day.”

The Parliament begins at the day to which it was prorogued and not before, and is an existing Parliament from the first day of its sitting (*a*), whether actually sitting or not. Anciently the return day of the writ was reckoned (*b*) the first day of the Parliament, if the King attended.

Of this high Court of Parliament thus assembled, the power and jurisdiction for making of laws in proceeding by bill, is absolute, and not confined either for causes or persons within any bounds. “ It hath sovereign and uncon- “ trollable authority in the making, confirming, enlarging, “ restraining, abrogating, repealing, reviving, and expounding “ laws, concerning matters of all possible denominations, ec- “ clesiastical or temporal, civil, military, maritime, or crimi- “ nal; this being the place in which that absolute, despotic “ power, which must in all governments reside somewhere, “ is entrusted by the constitution of these kingdoms” (*c*).

(*a*) See ante, p. 83.

(*b*) Elsyng, 86.

(*c*) Blackstone Comm. 1.

The including matters of religion, much struggled against by Papist ecclesiastics, is approved by the 'judicious' Hooker. "The Parliament," says he, "is a Court not so merely temporal, as if it might meddle with nothing but only leather and wool."

All mischiefs and remedies not within the reach of the ordinary course of the laws, are cognizable by this extraordinary tribunal. It can regulate or new model the succession to the Crown. It can alter the established religion of the land. It can change and create afresh the constitution of the kingdom and of Parliaments themselves. And as its power is absolute and without control, so is the exercise of that power, in the opinion of Sir Edward Coke, not in the main deficient in wisdom, and full of regard for the public good; seeing that "never any good bill was preferred, or good motion made in Parliament, whereof any memorial was made in the journal book or otherwise, though sometimes it succeeded not at the first, yet hath it never died, but at one time or other hath taken effect" (a).

Upon the assembling of Parliament, the King used to meet it, either in person or by representation, and explain the cause of convening it. Though opened by the King in person, the Parliament may, after prorogation, be met by commissioners; but at the beginning of a new Parliament, and at the commencement of every session after a prorogation, the cause of the summons must be declared to both Houses assembled, either by the King himself, or by persons authorised by his commission, before either House can proceed upon any business.

This took place by representation first; when the King was out of the realm or *in remotis* upon urgent occasions, and then by a *custos regni* or guardian of England, appointed by letters patent under the Great Seal; (the *capitalis justiciarius* mentioned in *Magna Charta*, cap. 11, appointed to act when the King is *extra regnum*.) And when the Grand Justiciary was abolished, "a regent" was appointed,

Opening of Parliaments anciently.

Cause of summons declared.

By King.

If King absent, by *custos regni*.

(a) 4 Inst. 32.

Or by Lords
Commis-
sioners.

or certain "Lords Justices," were named by the Sovereign for each particular occasion, when deemed expedient; for it is not now held imperative to appoint a *locum tenens*. But yet when any Parliament was to be holden, a special commission to the Guardian was considered necessary to begin the Parliament and to proceed therein, though the *teste* of the writ of summons were in the Guardian's name. Secondly, by commission under the Great Seal to certain Lords of Parliament, the King being at home, but disabled from attending by some infirmity (*a*).

The brief historical summary is as follows:

When William the Conqueror returned to Normandy, after his acquisition of England, he left Odo, Bishop of Bayeaux, and William Fitzherbert, to exercise the office of guardians in his absence.

Edward 1, having occasion to go to Flanders, left his son Edward, *custos* and *locum tenens* in his absence.

The last Parliament held in England by a *custos regni* was in the reign of Henry 6.

The office of *custos* could only exist when the King was absent from the kingdom, and it expired immediately on his return. When the King was prevented from appointing a *custos*, by being resident within the kingdom, he used to name special commissioners, invested with the same authority which he would himself have possessed if present.

When Charles 1 proposed to visit Scotland, during his unhappy disputes with his Parliament, the Commons, suspecting his intentions, prayed the Lords to join them in a petition that his Majesty would appoint a *custos regni*, or *locum tenens*, during his absence out of the kingdom. The Lords thought a parliamentary power by commission preferable. The matter dropped in consequence of the King's departure for Scotland before the two Houses had come to any agreement.

Cause of
summons
declared.

Anciently the cause of summons was declared by the Lord Chancellor or keeper of the Great Seal, by the King's commandment, without any formal commission (*b*); or in the

(*a*) 4 Inst. 7.

(*b*) Elsynge, 138.

absence of the Chancellor, (and sometimes in his presence,) by the Lord Chief Justice, or any other *honestus et facundus justiciarius*, who could make himself intelligible to a mixed assembly, and be distinctly heard; to both which essential qualifications of a good speaker, it appears by the *modus tenendi Parliamentum*, that no slight importance was attached. “Whilst they speak they shall stand (except the King) so that all of the Parliament might hear him that speaketh: if he speak something darkly, or speak in a low voice, let him speak again, and speak louder also, or let another speak for him” (a).

The same course was sometimes pursued, though the Chancellor were present, when a Bishop was Chancellor, and (b) the cause of summons was either touching malefactors for a breach of the peace, or the like, in which case none of the clergy would be present; or when it concerned usurpations of the Pope; for, “*Tielx Paroles ne gisent mye en bouche de Prelat*” (c), says the record. Indeed, the encroachments of the Pope were always treated “*per countes, barons, et autres nobles et tout la communautee*,” but the prelates were decorously left out.

In the first session of Parliament in modern times, the speech from the Throne is not delivered till after the choice of a Speaker by the House of Commons. But in every other session, except the first, as there is no election of a Speaker and no general swearing of members; the session is opened at once by the King’s speech, without any preliminary proceedings in either House.

On the first day of meeting of a new Parliament, the members of both Houses assemble in their respective chambers. The Commons are summoned by the gentleman usher of the black rod, and addressed by the Lord Chancellor, who acquaints them that his Majesty will, as soon as the members of both Houses shall be sworn, declare the causes of his calling the Parliament together, and it being

First day of meeting of a new Parliament.

(a) *Modus tenendi Parliam.*—Touching the speech for the Parliament.—*Hakewill*, 13.

(b) *Elsynge*, 139.

(c) *An.* 51 Ed. 3.

Commons
commanded to
choose a
Speaker.

Prayers read
in Lords.

New Peers
introduced.

Oaths taken.

Receivers and
tryers of peti-
tions ap-
pointed.

necessary that a Speaker of the House of Commons should be first chosen, the Commons are directed to proceed to his appointment, and to present him on the next day at a stated time, for his Majesty's royal approbation. After prayers read, (usually by a bishop); the Lord Chancellor and the other Lords present, proceed to take the oaths. Newly created peers are introduced in their robes between two other peers of their own dignity, also in their robes, with a prescribed formality (*a*), and a bishop is introduced between two other bishops.

The Lord Chancellor himself first takes the oaths, and subscribes the oath of abjuration. After which the lords present take the required oaths, the deputy usher holding the book, while a deputy of the Clerk of the Crown reads the oath. The Lords then subscribe the roll of the lords spiritual and temporal. The time for taking the oaths in both Houses was formerly limited to the hours between nine and four, but now, by an Act 6 & 7 Vict. c. 6, the Lords are entitled to take the oaths until five o'clock in the afternoon.

After the Commons have retired to choose their Speaker (*b*) four justices and two attendants, Masters of the Chancery, are appointed by the Lords to be receivers of petitions for England, Ireland, Wales, and Scotland, such petitions to be delivered within six days. At the same time, three justices and two attendants are named receivers of petitions for Gascoigne, Guienne, Poictiers, Normandy, Anjou, &c., such petitions to be delivered within the same period. Then are appointed six of the nobility and formerly two bishops, to be triers of the said petitions for England, Ireland, Wales, and Scotland; and the like number for Gascoigne and other places beyond the seas. They, or any four of them, are to sit in the Treasury Chamber, assisted by the King's council, to *try out* whether the petitions are reasonable and fit to be offered to the Lords. Such is the form still observed at the commencement of every Parliament. On the 28th of July, 1740, a motion was made in the House of Lords to

(*a*) For which see May, 135.

(*b*) 4 Inst. 10. Reeves' Hist.

Eng. Law, vol 2, part 2, c. 10.

4 Hats. 72.

order that no future entry should be made in the Journals of that House of any appointment of receivers and tryers, &c. The question being put, was "resolved in the negative."

Anciently the prelates were included in the list of tryers, now they are omitted. The judges who receive writs of summons as assistants, were also appointed tryers, but were not liable to be made receivers. Now it seems the judges are named receivers, even when they are peers. So that, what is a mere form, is not duly observed. Those appointed in 1837, were (a):—

"*Les Receivours des Petitions de la Grande Bretagne*
"*et d'Irlande.*

Receivers and
tryers who
named.

"*Messire Nicholas Coningham Tyndal, Chevalier et*
"*Chief Justice de Banc Commune.*

"*Messire James Allan Parke Chevalier et Justicier.*

"*Messire Wm. Geo. Adam, Ecuyer.*

"*Les Receivours des Petitions de Gascoyne et des autres*
"*terres et pays de par la Mer et des Isles.*

"*Le Baron Abinger, Chief Baron de l'Exchequer de*
"*la Reine.*

"*Messire James Parke, Chevalier.*

"*Messire John Edmund Dodeswell, Ecuyer.*

"*Les Trioures des Petitions, &c.*

"*Le Duc de Norfolk.*

"*Le Duc de Somerset.*

"*Le Marquis de Thomond, &c. &c."*

The King's Serjeants are still liable to serve as assistants to the tryers of petitions.

In modern times so soon as the greater part of the members of both Houses are sworn, the causes of summons are declared by his Majesty in person or by commission; the King "commanding" or the Lords Commissioners "desiring" the immediate attendance of the Commons in the House of Peers for the purpose (b): though the declaration of the cause of summons in the first session of a Parliament, does not take place, as before stated, till after the Speaker has been elected and approved.

Commons
sent for, to
hear King's
speech.

(a) Macqueen's Practice of
Lords, Introduction, p. 11.

(b) May, 143.

Speaker of the
House of
Lords.

For the dispatch of business, each House of Parliament has its Speaker. The Speaker of the House of Lords, who manages the formal business there, is the Lord Chancellor or Keeper of the Great Seal, or say the books, any other appointed by the King's commission. At a later period, the doctrine seems to prevail, that the Lord Chancellor is by prescription, *ex officio*, Prolocutor and Speaker of the House of Lords whether he be a peer or not. Lord Clarendon, at the Restoration, at the meeting of the House of Lords on June 1st, 1660, though then a commoner, took his place on the woolsack, as Speaker by prescription. Elsynge, is of opinion that when the chief justice or other chief judge, declared the summons he also managed the Parliament business as Speaker, having appointment from the King—"executing the office, not supplying the place "of the Chancellor therein" (*a*). If no Speaker is appointed, the House of Lords, it is said, may elect one. But in actual practice there are always deputy speakers appointed by commission, to officiate during the absence of the Lord Chancellor or Lord Keeper. And in the absence of all of these, the Lords elect a Speaker *pro tempore*; but all those speakers are immediately superseded when the Chancellor enters.

Deputy
Speaker.

Speaker
pro tempore.

It clearly is not necessary that the person presiding as Speaker in the House of Lords, should be himself a member of the House. A Lord Keeper has officiated for years as Speaker, without having been raised to the dignity of the peerage. He sits upon the woolsack; but the woolsack is not *in* the House, and those who occupy it, are not reckoned in taking the votes. When not himself a member of the House, the duties of the office are limited to putting the question and other formal proceedings (*b*); and it is said that Sir Robert Henley, when Lord Keeper, frequently complained that he was obliged to move the reversal of his own decrees, without being permitted to utter a word in their defence.

The Speaker of the House of Lords is invested with no more authority when he *is* a peer, than any other member

(*a*) Elsynge, 145.

(*b*) See Lords, S. O., No. 2, No. 3.

of the House. If the Chancellor addresses the House, it must be from his own place as a peer, and his opinion upon a point of order, is equally liable to be questioned as that of any other peer. He is not moderator of their proceedings. The Standing Orders provide, that "the Lord Chancellor, when he speaks to the House, is always to speak uncovered, and is not to adjourn the House or to do any thing else, as mouth of the House, without the consent of the Lords first had, except the ordinary thing about bills, which the Lords may likewise overrule." The speeches in debate are not addressed to the Speaker in the House of Lords, but to the Lords collectively. He does not name the peer who is to be heard. The Speaker gives his vote as every other Lord of Parliament does; and if the votes are equal, he has no casting vote, but in such cases, *semper præsumitur pro negante*, i. e. the former law is not to be changed.

In fine, the Speaker of the Upper House may preside in it, without being a member. And when he is a member of the House he can scarcely be said to preside. He is a ministerial officer with purely formal duties.

The House of Commons are commanded to choose a Speaker and present him to his Majesty on a certain day (a). To enable the House to proceed to elect a Speaker, a direction or permission from the King is now held to be essentially necessary; though, according to Elsynge, it does not appear by the ancient records that the Commons (b) "ever had any such commandment prior to the 2 Hen. 4." The King's command, it seems, may be signified either by the Chancellor in the House of Lords, or by a privy councillor in the House of Commons.

Of House of Commons.

Choice of Speaker.

The first appointment of a Speaker for the House of Commons, is usually referred to the unknown period of the separation of the two Houses. But Elsynge (c) contends that the Commons "ever had their Speaker;" for having successfully shown that they always had a place for consul-

(a) 1 Woodeson, Lecture 1.

(b) Elsynge, 145.

(c) Elsynge, 155.

tation apart from the Lords, though they often met and sat together in one room, he not unreasonably infers, that, at that time, a Speaker or chairman was necessary to prevent confusion. As early as an. 44 Hen. 3, the answer of the Parliament to Pope Alexander, touching the recall of Adomar, elect Bishop of Winchester (“*Si dom. rex et regni majores hoc vellent, communitas tamen ipsius ingressum in Angliam jam nullatenus sustineret,*”) was signed and sealed, first by the Lords, then by Petrus de Montfort, *vice totius communitatis*. Hence, it is concluded with great plausibility, that Petrus de Montfort was Speaker of the Commons; and the rather, as Sir John Tiptoft, Speaker, put his seal and signature to the entail of the Crown, an. 7 & 8 Hen. 4, using the very same words, *vice totius communitatis*.

The first record extant that directly names the Speaker is of the Parliament 51 Ed. 3, but in 17 Ed. 3, “*les Com-muns responderent per Monsieur William Trussel.*” Divers Parliament rolls of Rich. 2, mention the Speaker in the beginning, as his presentment, or protestation, and the like.

And now, the Commons being assembled in their own House, a member reminds (a) them of their charge given in the Upper House to choose their Speaker, and then recommends one to them. The forms of the election of a Speaker require that the person proposed should be present in the House when he is nominated (b); and it is to be desired, in order to avoid future inconveniences and trouble, that he should be a member upon whose seat there is no probability of a question arising. Formerly, the person in the chair frequently held a considerable office at the same time; but now, by the 30 Geo. 3, c. 10, the salary of the Speaker of the House of Commons, including his fees and former allowances, is fixed at the clear yearly sum of 6,000*l.*, and he is disqualified from holding any office under the Crown, during pleasure.

When but one person is proposed for Speaker, and there is no objection made to him, it has not been usual (c) to put

(a) Elsynge, 160. Scobell, 3.
D'Ew. Jour.

(b) 2 Hats. 207.
(c) Ibid.

any question to the House; but, without a question, the members proposing him take him (a) out of his seat, and conduct him to the chair. But if any objection is made, and any other person is proposed, the sense of the House must be taken, by a question, on the name of the person first proposed to them. This question is put by the clerk; and on these occasions, it is stated (b) in the Journal, that the clerk, by order of the House, puts the question. On a division upon the question for a Speaker, the House divide in the House as if they were in a committee, to the right and left, and the clerk appoints a teller on each side. The Speaker elect is then conducted to the chair, and expresses from the steps his grateful thanks for the high honour conferred upon him (c).

As soon as the Speaker is chosen and sits down in the chair, the mace is to be laid upon the table by the serjeant—before the election it should be under the table; and the House cannot proceed to the election of a new Speaker *without the mace*. This objection was made on the 13th of March, 1694, on Sir J. Trevor's being taken ill, and Hatsell says (d), "very properly." It has been usual for persons, when proposed to be Speakers, to decline the office, "from a sense of their own insufficiency," and "even on the steps of the chair to beg of the House to excuse them." Elsynge says, "He (the person proposed) standeth up and showeth what abilities are required in the Speaker, and that there are divers amongst them well furnished with such qualities, and disableth himself, and prayeth a new choice to be made, which is commonly answered with a full consent of voices upon his name" (with cheers). At the same time, it was the practice to request permission to plead in another place his excuses and inability to discharge the office; and this the Speaker used to do upon being presented to the King. For, though chosen by the Commons, the Speaker, it is laid down by Mr. J. Blackstone,

Query, Whether the Speaker must

(a) "Take him by the arms."—
Elsynge.

(b) 2 Hatsell, 213.

(c) May, 136.

(d) 2 Hatsell, 208.

be approved
by the King?

Precedents.

must be approved by the King.* Accordingly, Sir Edward Coke, upon being elected Speaker, in 1592, in his address to the throne, declared it "no election until your Majesty "giveth allowance and approbation." But in later times, the House of Commons have not permitted their Speaker to draw their rights and privileges into question by any vague use of courtly language. Elsynge says, "Surely the election "of the Speaker was anciently free to the Commons to "choose whom they would, of their own House; which "appears in this that the King never rejected any whom "they made choice of.—See," he proceeds, "5 Richard 2, "Sir Richard Waldegrave excused himself, but the King "charged him upon his allegiance to take it upon him,— "sithe he was chosen by the Commons. Whereby it "appears plainly that the choice was absolutely in their "own power." This reasoning is perhaps inconsequential, but the doctrine appears sound and rational. A solitary instance occurs at a subsequent period, of the King refusing to approve the Speaker chosen by the House of Commons, in the case of Sir Edward Seymour, in 1678. Burnet says, "After the debate, in 1678, had held a week, "and created much anger, a temper was found at last; "Seymour's election was let fall, but the point was settled, "that the right of electing was in the House, and the confirmation was a thing of course." Upon this, Mr. Hatsell observes (a), "By what authority the Bishop draws this "conclusion from what passed at that time, I don't know:" And in a note observes, that Harley, who had been Speaker, used to say, "That all that the Commons got by this "test, was that the Speaker might be moved for by one who "was not a privy councillor, Lord Russell having moved for "Serjeant Gregory." But, in estimating what was really gained to the privileges of the Commons upon this occasion,

(a) 2 Hats. 211.

* "It is acutely remarked by Hume, as an evidence of the despotic "authority of Hen. 7, that *he* chose Dudley, who was so hateful to the "people, as the Speaker of the House of Commons."—*Westminster Review*, No. 16, Art. 1.

it is necessary to refer to the doctrines which had been before delivered upon this subject, from the highest authority. "It is true," says Lord Coke (*a*), "that the Commons are to choose their Speaker; but seeing that after their choice the King may refuse him; for avoiding of expense of time and contestation, the use is, (as in the *conge de eslier* of a bishop,) that the King doth name a discreet and learned man, whom the Commons elect: but without their election no Speaker can be appointed for them; for he is their mouth," &c.

The *nomination* of a Speaker by the Crown, acting upon these maxims, might be expected to be signified by a privy councillor. But the fact of the dispute in Sir Edward Seymour's case having terminated in the election of a Speaker proposed by the Opposition, tends to show that the House, waiving upon this particular occasion, the choice that was obnoxious to the King, the principle must have been conceded, that the election of the Speaker is substantially in the Commons, and that the King's approbation of him, when chosen, is only a becoming form.

The sensible observations of Sir Robert Atkins on some of the other forms of the House, which are too just and striking not to have been often quoted, have also a direct application to this respectful practice of requiring the approbation of the King to the choice of the Commons. "That humble and modest way of the people's addressing their sovereign, either for the making laws, which has been very ancient; or for granting privileges, (by the Speaker of the Commons); shows great reverence, and becomes the majesty of the prince so to be addressed to; but let it not be made an argument, that either the laws thereupon made, or the privileges so allowed, are precarious and merely of favour, or may be refused them of right."

So, in an apology (*b*) of the House of Commons touching their privileges, made in 1604, they plainly declare, that "our making of request, in the entrance of Parliament, to

(*a*) 4 Inst. 8.

(*b*) Petyt. Jus. Parl. chap. 10, 227. 1 Hats. Appen. x.

“enjoy our privileges, is an act of manners; and doth
 “weaken our right no more, than our suing to the King for
 “our lands by petition instead of *præcipe*.”

Elsynge moves two questions:

1st. Whether the Commons might choose their Speaker, if the King commanded them not; *i. e.* the good clerk means, if the King should not give them commandment.

2ndly. Whether the election be in their own absolute choice.

To the first he answers, that the long use hath made the permission so material, that without the King's commandment or leave, they cannot choose their Speaker; *sed aliter ab antiquo*.

The second he answers affirmatively, in a passage already cited.

His authority upon this latter point, has been met with the (a) instance of Sir John Popham, in 1540, who was discharged by the King *on his excuse*; and thereupon the Commons chose and presented William Tresham, Esq., who made no excuse. Here the Speaker's excuse was accepted by the King, and he (b), at his own request, probably as an act of grace and favour under some particular circumstances, was discharged from the office. The words of the record are, “*Rex ipsam suam excusationem admisit, et ipsum de occupatione predictâ exoneravit*” (c).

So it was determined at the council the night before, to accept of Sir Edward Seymour's excuse; but he being aware of the fact, purposely avoided making any, and threw upon the minister the odium of advancing a doubtful and invidious claim; or, at best, of exercising an ungracious prerogative.*

Being chosen, the Speaker is presented to the King in the House of Lords, and for form's sake used to excuse, or,

(a) D'Ew. Jour. 42, col. 1.

(b) 2 Hats. 202.

(c) Parl. Hist. ii. 253.

* On a vacancy during the illness of George 3, a Speaker was appointed without leave of the King, *ex necessitate rei*. So, at the Restoration, and at the Revolution.

as it is more quaintly expressed, to disable himself, and still expresses a diffidence of his capacity to exercise so great a trust, but submits himself with all humility, to his Majesty's gracious approbation (a).

To the Speaker's excuse at his presentment, the Chancellor was accustomed to reply in an answer of compliment and encouragement; but now he shortly informs him, that his Majesty is satisfied of his sufficiency and most fully approves of and confirms him, as the Speaker. The Speaker then claims the ancient privileges of the Commons. Elsynge says (b): "Anciently the Speaker came not until he had something to say to his Majesty on behalf of the Commons; and if he spoke anything of his own mind, as sometimes happened, he declared it so, but never made any orations, as now, of later times. Now they do wholly omit their ancient* protestations, and, in lieu thereof, make petition to the King; some in general words, for all their ancient privileges; and some in particular, for, 1st, access unto his Majesty; 2ndly, freedom of speech; and, 3rdly, freedom from arrest: and yet they did ever enjoy these privileges in as ample a manner as now, though not formerly prayed by the Speaker."

Speaker's prayer for access unto his Majesty; freedom of speech, and freedom from arrest, &c.

Whatever the form, whether prayer or protestation, it seems agreed that, on presenting the Speaker to the King, and after he has been approved, it has long been customary, (indeed it is positively recorded from the time of King

(a) May's "Law, Privileges, &c.," 137.

(b) Manner of holding Parliaments in England, 170.

* The protestation is said to have been usually in these words:—

1st. That the Commons in this Parliament may have free speech, as by right and of custom they have used, and all their ancient and just liberties allowed to them.

2ndly. That the members (and formerly their servants, &c.) may be free from all arrests.

3dly. That in anything he shall deliver in the name of the Commons, if he shall commit any error, no fault may be arrected to the Commons, and that he may resort again to the Commons for declaration of their true intent, and that his error may be pardoned.

4thly. That as often as necessity for his Majesty's service and the good of the commonwealth shall require, he may, by direction of the House of Commons, have access to his royal person.—4 *Inst.* 8. *Elsyn.* 164. *Rush. Collect.* 484.

Hen. 8); for the Speaker, besides a general prayer for their ancient and just privileges and liberties (*a*), to claim the several privileges of freedom of speech, freedom from arrest, access to the royal person, candid construction and pardon for errors, and for leave to resort to the Commons for a declaration of their true intent and meaning (*b*).

Such petition or prayer, was considered as a public claim and notification to the King and to the people, of the privileges of the House of Commons, solemnly made in order that no man might plead ignorance (*c*).

Leaving to the next chapter, the detailed consideration of these claims, both specific and general, and the discussion of the subject of privilege at large, the present chapter will conclude with a few brief particulars relating to the office and duties of the Speaker.

Office of
Speaker.

On his return to the House of Commons, the Speaker in the chair reports to the House, his approval by his Majesty, and the confirmation of their privileges, and repeats his profound acknowledgments to the House, for the high honour they have conferred on him. He used also to request the Commons, "That inasmuch as they have chosen him for their mouth, they would assist him, and favourably accept his proceedings, from a heart unfeigned and sincere, to do them service." The mace, it must be noticed, is not carried before the Speaker until his return, after having been approved by the King.

House cannot
act without
their Speaker.

The House of Commons cannot sit (*d*) without their Speaker; therefore a grievous sickness is good cause to remove him, as in 1 Hen. 4, John Cheney was, "for such illness that he could not serve," discharged. So, in 1 Hen. 5, William Stourton, having made an indiscreet speech, which gave offence to the House, John Dorewarde is chosen: "for that the said William Stourton lay sick in his bed, and was not able to execute the office." "It should seem," says Elsynge, "that Stourton was sick for grief, and note,

(*a*) 4 Inst. 8.

(*b*) Elsynge, 168.

(*c*) Hatsell, 216.

(*d*) 4 Inst. 8.

“the King was not acquainted with their choice of a new Speaker before they presented him.”

During the Speaker's absence, whether (a) from illness or any other cause, no business can be done, nor any question proposed but a question of adjournment, and that question must be put by the clerk. This has been often productive of inconvenience, and propositions have consequently been made for having a deputy speaker, or a speaker *pro tempore*, &c.; but none of these suggestions have been hitherto adopted.

But no Deputy Speaker appointed.

Since the Parliamentary Declaration of the rank of the Speaker, contained in the 1st William and Mary, ch. 21, “That the Lords Commissioners for the great seal to execute the office of Lord Chancellor or Lord Keeper, not being peers, shall have and take place next after the peers of this realm and Speaker of the House of Commons,” the Speaker has constantly taken place next to Peers, both in and out of Parliament time (b).

Rank of Speaker.

The principal duties of the Speaker, besides the issuing of writs, which has been already treated of, are—

His duties generally.

1. Taking the chair; which he cannot do till there are at least forty members in the House; and adjourning the House, of his own authority, without a question put, if forty members are not present. Also resuming the chair in the midst of a committee, for the same reason.

2. Maintaining order; naming a member that is disorderly; thanking and reprimanding members and other persons (c).

The Speaker of the House of Commons cannot give his opinion, or argue any question in the House, unless the numbers upon a division should be equal, when he has a casting vote;* and it has been usual, in giving this vote, for

Casting vote.

(a) 2 Hatsell, 212.

(b) 2 Hatsell, 236.

(c) Lord Colchester's Synthetical Table of Proceedings in the House of Commons.

* A casting vote sometimes signifies, as here, the single vote of a person who never votes but in the case of an equality; sometimes the

the Speaker to state at the same time the reasons which influence his opinion.

In committees of the whole House, the Speaker is not obliged to be present; and when he is, he is considered as a private member, and has a voice accordingly.

The servant of
the House.

The Speaker is the servant of the House, who is to obey implicitly the orders of the House, without attending to any other commands. In matters of doubt (*a*), he is to explain, but not to sway. In matters of difficulty, or if he is referred to to inform the House on a point of order or practice, it is his duty to state every thing he knows from the Journals, or the history of Parliament; but not to draw conclusions. In short he has no voice,* but to declare the sentiments of the House when he has ascertained them; to collect faithfully the genuine sense of a numerous assembly, and “to represent their conclusions with truth, with life, with lustre, and with full advantage” (*b*).

(*a*) 2 Hatsell, 232.

(*b*) Serjeant Glanville's Ad-

dress when Speaker, 1640.—
Lords' Journal.

double vote of a person who first votes with the rest, and then upon an equality, creates a majority by giving a second vote.

There is no casting vote in courts of justice, nor does any exist in corporations or elsewhere, unless expressly given by statute or charter, or by immemorial usage.

* And the Speaker is said to be not only the mouth, but also the eyes and ears of the House. Hence, the Speaker (Lenthall) replied to King Charles 1, when commanded to disclose certain transactions in the House, “That he had neither eyes to see, ears to hear, nor mouth to speak, but as the House should direct him.”

CHAPTER III.

Of Privilege in general—The Privileges claimed by the Speaker, examined and traced.

BESIDES the specific claim for “freedom from arrest,” and to have “free speech as by right and of custom they have “used,” the petition of the Speaker at the beginning of a Parliament, heretofore prayed to have all their “ancient and just” privileges allowed them, as their undoubted right and inheritance. But by what law is privilege to be construed; by what rules are determinations to be governed; what *are* the remaining “ancient and just” privileges of the House of Commons; how is their existence to be ascertained; who are to be their judges? These are grave, and some of them, vexed questions, which present themselves upon the very threshold of the inquiry.

Of privilege of Parliament in general.

The subject is one of great delicacy and of still greater importance, and requires to be treated with integrity and freedom, and at the same time, with decorum and respect.

The law which governs the subject, is that peculiar law commonly called:—“The law and custom of Parliament.” For, (a) “as every Court of justice hath laws and customs for “its direction, some the civil and canon, some the common “law; others their own peculiar laws and customs; so the “High Court of Parliament has also its own peculiar law—“a law, *ab omnibus quærenda, a multis ignorata, a paucis “cognita.*” (b) And this *lex Parliamenti ab omnibus quærenda*, is to be found by all who desire its attainment by diligent seeking; is, like all other lore, the reward of research. It is discoverable, not by intuition, not by any new light vouchsafed only to Parliament men, but by application and

By what law tried.

(a) 1 Bl. Com. 163.

(b) 1 Inst. 11.

By what law.

industry, by examining the records of Parliament, and inquiring what was claimed and allowed in similar instances in former times; precisely in the same manner as the common law, consisting of unwritten customs and maxims, is discovered and construed by the judges of the several Courts of law, from experience and study, and familiarity with the judicial decisions of their predecessors. The records of the Courts, carefully preserved and registered, furnish conclusive evidence of such customs as form part of the common law. The members of the respective Houses of Parliament, when called upon to declare the law of Parliament, (of which the privilege of Parliament will be properly insisted to form a part); are the judges of that law, and will have recourse to the same means of ascertaining and determining what that law is.

How discovered and construed.

Hence, Lord Holt has (a) pointedly remarked that, "if the law of Parliament be *a multis ignorata*, it is only because they will not apply themselves to learn it." The whole of it in the words of the venerable authority already frequently referred to (Lord Coke (b)), is to be sought and found "in the Rolls of Parliament," in "precedents and records," and "continual experience of the custom of Parliament." "The only method," says Hatsell (c), "of knowing what are the privileges of the House of Commons, is, to consult the records of that House, and to search into the history of Parliament for those cases in which a claim of privilege has been made, and to examine whether it has been admitted or refused."

"The law of Parliament," says Hallam (d), as "determined by regular custom, is incorporated into our constitution; but not so as to warrant an indefinite uncontrollable assumption of power in any case; least of all in judicial proceedings, where the form and essence of justice are inseparable from each other."

Junius, who will be always cited with effect, as a forcible

(a) 1 Salk. 505. 2 Lord Raymond, 1114.

(b) 4 Inst. 50.

(c) 1 Hatsell, 2.

(d) Hist. Middle Ages, vol 2, c. 8.

constitutional writer, though he rarely touches questions of law without falling into some extravagant error, rests the question of privilege upon solid and rational grounds. He says (a) that, "To establish a claim of privilege in either House, and to distinguish original right from usurpation, it must appear that, 1st, it is indispensably necessary for the performance of the duty they are employed in, and also, 2ndly, that it has been uniformly allowed."

This sober and warranted claim of a peculiar law, determined by regular custom, never has been, and is never likely to be, disputed by the Courts of Common Law, which are by no means wanting in deference for the Legislature, or disinclined to support their "ancient and just privileges." A class peculiarly instructed in the history of our institutions, will always best know, how far the real essential privileges of Parliament have been in the past, and may again become in the future, the safeguards of the rights and liberties of the people. Any privilege truly essential to the dignity, and to the proper exercise of the authority of Parliament, will be as safely guarded by the judges of the present times, as by the most popular senator in the House of Commons. No doubt the constitutional lawyer will be ever vigilant to detect, and firm to oppose, the encroachments of arbitrary power, in however specious forms, and under however venerable names, it may appear. Tyranny, he will say, is not privilege. Privilege, when the term is not improperly used and confounded with power, (which may be abused;) implies protection. Privilege is, or ought to be, protection—against the tyranny of the one, the few, or the many. Such an inquirer will temperately call for—the record of regular custom; the palpable evidence of enjoyment;—the sanction, the recognition of allowance; the admitted precedents and authorities, the series of which establishes the right;—and if he find the claim unaccompanied with, and unsupported by, these, he will plainly repudiate the "tyrant plea of necessity" for advanced powers.

Determined
by regular
custom.

Not from
necessity alone.

(a) 2 Woodfall, Letter xliv.

How ascer-
tained and
known.

By this customary law, which if it be not anywhere prescribed in clear and explicit terms, or expounded in particular stated maxims, is yet ascertainable, as being determined by regular custom, and subject to * certain prescriptive limitations, are all questions of Parliamentary privilege to be tried. And such law is to be expounded by that House, to which any matter that arises properly relates, and no where else; *exceptis excipiendis*.

Remaining
privileges.

Of the remaining Parliamentary privileges not hitherto enumerated, Blackstone observes that they are not only very large, but indefinite, adding that “the dignity and “independence of the two Houses are in a great measure “preserved by keeping their privileges undefined;” by which is probably meant not determined and declared *a priori*.

It is the unrestricted use of these and similar expressions, “nowhere ascertained,” “indefinite,” and “undefined,” which has probably led to so many crude conceptions, and even vague speculations, upon the true nature of this customary law. Because the *lex Parliamenti* has not been dogmatically treated in an institutional method; because it has not been defined, distinguished, codified, classified, expounded and commented upon; (simplified, like other branches of English law, till it became complex, and elucidated, till it was made obscure); it has been often erroneously supposed that it must be unsettled in its doctrines, indeterminate and arbitrary. But then it was forgotten that the very name and nature of this special law and particular system of customs, *ex vi termini*, imports something permanent, uniform and universal. A legal or Parliamentary *custom* must be certain, known, fixed and invariable. And if not set out in stated maxims in any institute or commentary, yet, when it can be ascertained by learned lucubrations from the “*præteritorum memoria eventorum* ;” then, in the contemplation of law, *id certum est quod certum reddi potest*. And maxims of a peculiar law, which can be

* As *ex gr.* that the House of Commons shall not examine upon oath; or commit beyond the session.

found in precedents, traced in Parliamentary history, and verified by the records of both Houses of Parliament, do really acquire, from the authentic nature of their evidence, a character of fixity and stability, which more than levels them in point of certainty, with any other traditional branch of our municipal jurisprudence.

Tried by the
Consuetudo
Parliamenti.

But who, it will be inquired, are to be the judges of this law, and how is it to be expounded? The two Houses of Parliament respectively, claim to be the proper and sole judges of their own peculiar privileges. In what sense is this claim to be understood? As a claim of exclusive jurisdiction (and not of uncontrollable power;) it is intelligible and (rightly considered,) not ill founded; though subject to some qualification, and to an exception which does not destroy the rule. Where a privilege is undeniable, and only its observance is in question, the House to which the matter relates, is alone competent to try the issue of its respect or violation. And the Courts of Common Law, which will ever readily support and give effect to all the rightful privileges of Parliament which can be unequivocally ascertained, will also cautiously abstain from interfering with the punishments of either House for a contempt, which is certainly "proper to the jurisdiction against which "the contempt is" (a).

Who the
judges.

But it is obvious that cases may arise, where a privilege may be claimed by either House of Parliament, and regarded as essentially necessary to the due discharge of its legislative functions, which is not so much supported by direct proof, as drawn from analogies, more or less just; in which event reasonable doubts as to the existence or extent of the privilege, may be entertained, both in the Courts and in the country. In all such cases, where the privilege is imperfectly evidenced, obscure or doubtful, the fittest and most desirable course would ever seem to be, with a view to quiet the public mind and to avoid all unseemly collisions, to settle the question by a declaratory act. The claim of

(a) Clarendon Hist. Rebell. vol. 2, book 4, 398.

The two Houses of Parliament are the judges.

privilege was originally the claim of the High Court of Parliament; not of either House separately, but of both Houses conjointly; and where the privilege is real, and essentially just and necessary, there can be no doubt but that both Houses would concur, to support and declare it.

The right then, in either House of Parliament, of exclusively determining upon any violation of their acknowledged privileges, is unquestioned. In this primary sense, the two Houses respectively, are with propriety said, to be the sole judges of their own privileges; that is, whether the privileges in question are notorious, and have been infringed in the particular instance; and in what manner they shall be vindicated and their infraction punished.

They are also, singularly, the persons to judge of their own peculiar forms and manner of proceeding; "*suis propriis legibus et consuetudinibus subsistit.*"* The House is confessedly the sole judge of its own privileges, where the subject-matter falls properly within its jurisdiction; as, for any matter that occurs within the walls of Parliament; so, upon whatever is necessary to the transaction of business there, or for the protection of individual members, to enable them to discharge their Parliamentary functions; or for the punishment of persons guilty of contempts to the House, or of obstructing its proceedings. When the subject-matter falls within the jurisdiction of the House, its adjudication is final, and a Court of Law cannot question its judgment; for, in such case, the power of the House, or the due exercise of its power, is the original and primary matter propounded to the Court, and arises directly.

The Judges will only take cognisance of the privileges of Parliament, where questions concerning those privileges,

* *Legibus propriis subsistit*, was said also of the Forest Laws: an anomaly in the legislation of the country, grievously extended under the Norman princes: "*quas non communi regni jure, sed voluntaria principum institutione subnixas dicunt.*" Offences against the Forest Laws were punished at the discretion of the King; the most frightful cruelties were practised, and whole families were driven into beggary. But even this admitted arbitrary power, was so much abused by the King that it was taken from him.

are brought collaterally or incidentally before them for judgment, in the way of suit or action, when the Court is obliged to determine the question raised, to prevent a failure of justice. They will not themselves raise the question, or suffer it to be raised by others, when it has been properly decided by competent authority. They will not entertain the point so disposed of, when it comes before them, as it is then held to do, directly; because cognizance of it belongs *ad aliud examen*; but will entertain it only when, as Sir Thomas Jones said in Lord Shaftesbury's case (*a*), "It is an incident to the cause before them, of which they are already possessed." And then, it should never be forgotten, that the rule by which the question will be tried,—the law upon which the decision of the Judges will proceed, is that same peculiar law, the identical *lex et consuetudo Parliamenti*, truly said to be a part of the *lex terræ*, of which the Judges are bound to inform themselves, and by which the determination of such matters is held to be properly governed.

To draw the line between the question of privilege coming directly before the Court and the cases in which it comes incidentally, would be a rash undertaking in a text writer. The rule is certainly difficult of application; but it is quite sufficient for his province, to demonstrate, that it is the rule, according to the decisions of the most learned judges, ancient and modern. Where the interests of third persons involved in litigation, come to be decided upon in a Court of law, the direct question before the Court is the right of parties who are strangers to the Houses of Parliament; and if a collateral issue be raised in the course of the pleadings on any question of Parliamentary privilege, *that* comes in incidentally. Where either House of Parliament has adjudicated upon the particular case between the same parties, and that question of privilege is afterwards brought before a Court of law, it arises directly.

But two things must concur, to make the decision of

(*a*) 2 State Trials, 615. 1 Mod. 144.

Of matters
within their
jurisdiction.

the House final. They must have decided the precise question;—the contested matter must have passed *in rem judicatam*; and they must possess jurisdiction to decide it: and then no Court ought to inquire whether the House has adjudicated properly or not. But where the House has clearly no jurisdiction, at all, over the subject-matter; as, if the House of Commons assumed the exercise of a general criminal jurisdiction,—or the Lords, that of original jurisdiction over suits,—accompanied in both cases by resolutions that they respectively possessed the power to put men to death for offences, and to entertain original suits,—notwithstanding any adjudications made by them, and also, that the question would arise directly upon the act of either House, the Court would still undoubtedly interfere. This shows that the test afforded, though a known and settled distinction, is quite unsatisfactory, without also considering the question of jurisdiction in the adjudicating *forum*. Where either House has expressly decided upon a question of privilege, the only question any longer open, is whether the subject-matter does properly fall within its jurisdiction, or whether the claim set up, exceeds the legal limits of privilege, and the House has usurped a power it does not possess.

But, (as if it were designed to prop up a defective authority, which it could not supply); the House has sometimes declared by Votes or Resolutions, that it *does* possess the privilege in question; and in addition to being party and judge, claims to be a witness;—and that, an interested witness giving testimony in his own favour! What is the due effect of such resolutions?

Votes and
resolutions,
effect of.

When privileges claimed by the House of Commons have been of necessity, submitted to the examination of the Courts of Common Law, and have been found unsupported by usage and evidence of enjoyment, (upon which they confessedly depend), such claims have, (whatever votes may have passed in either House upon the subject), always been disallowed. As, when a joint privilege was claimed by members of the House of Commons “not to be imprisoned

“ or impleaded during the time of Parliament,” the Barons of the Exchequer (*a*), while they recognized the former claim of privilege, decided that there was no such privilege as the latter, “*quin quod implacitari debent* ;” deciding one claim in favour of the House of Commons, and one, against them. So, in the great case of (*b*) Burdett and Abbott, the House of Commons of that day, becomingly submitted the existence, as well as the exercise, of the privilege then disputed, to the decision of a Court of Justice. The question was, (as it must be), entertained by the Court of Queen’s Bench,—was most elaborately argued and comprehensively considered. The Court unanimously upheld the arrest of the defendant as legal, and their judgment was unanimously affirmed in the Exchequer Chamber, and afterwards in the House of Lords. The Courts of Law, original and appellant, supported the House of Commons and affirmed the privilege ; as they always will be found to do, when the claim is proper. But the proceeding of the House of Commons, relied upon in that case as a defence, was upheld, not because it was claimed as a privilege by the House, or declared or resolved by them to be their privilege, but because it was a privilege, well known to, and always recognized by law. “ There can be no privilege,” says Lord Clarendon, “ of which the law doth not take notice, “ and which is not pleadable, by, and at, law.”

“ Thus,” as was most ably urged in the excellent argument in Burdett and Abbott, “ is it rendered apparent, that one branch of the Legislature cannot, by any votes, create a new privilege ; because in several of the cases, the Commons had claimed privileges, which were questioned in the Courts of Law and disallowed by the Parliament.” No resolution of either House of Parliament can make that a legal and constitutional privilege which was not so before. A Court cannot give itself jurisdiction by adjudging that it enjoys it.

(*a*) Donne and Walsh, 4 Register, 752.

(*b*) 14 East, 140.

Qualification of
rule.

Expounded,
not extended
by themselves.

To create a new privilege would in effect, be making a new law, which one House singly, cannot do. This leads to the necessary qualification of the stated rule. The law of Parliament may be expounded by themselves, from time to time, but cannot be extended, without the authority of the whole Legislature. Members of either House of Parliament, constituting *per se*, only a part of the Sovereign power in the State (which alone can make new laws), have not an unlimited right of creating and extending exceptions in their own favour. When Fortescue says (*a*) of Parliament:—"It is so high and mighty in its nature, that it "may make law, and that which is law it may make no "law," he is enlarging upon the transcendent power of Parliament in its collective and legislative capacity. And what is obviously true of the whole, becomes monstrous when applied to a part. And this is not only sound legal doctrine, but it is also admitted Parliamentary "law and "custom." In 1704, the Lords communicated a resolution to the Commons, at a conference: "That neither House "of Parliament have power, by any vote or declaration, to "create to themselves new privileges, not warranted by the "known law and custom of Parliament: which was assented "to by the Commons;" and, indeed, is not now contested on their behalf. And yet, who will logically deny, that if they could give themselves jurisdiction to decide in favour of doubtful powers, they would create new privileges?

The result is, that the determination and knowledge of privilege of Parliament, belongs to the members of the two Houses respectively, with the limitation before stated; but in declaring the law, they act judicially, and are under a solemn obligation *jus dicere* and not *jus dare*; and they must not extend their jurisdiction, or the determination will be *coram non judice*, and void. Their's is, at the very utmost, indisputably, a special jurisdiction, exercised in expounding a peculiar law within circumscribed bounds, which must not be exceeded. And if they should in any

(*a*) Thorpe's Case, 32 Hen. 6. 5 Rot. Parl. 239.

case decide mistakingly, (*et multi et boni homines idem fecerunt*), and pronounce a judgment in favour of a privilege new in principle, and not merely in terms, and never before claimed or allowed in the history of Parliament; such their new, unfounded, Parliamentary law,—like any erroneous decision of the judges in the Common Law Courts;—must be declared not to be Parliamentary law according to the *lex et consuetudo Parliamenti*; it must be pronounced, that there exists no such privilege!

When jurisdiction not exclusive.

To be as explicit as possible upon so delicate a subject, it is apprehended that the decisions of the two Houses of Parliament, in cases, of which, (when within their jurisdiction), they are admitted to be the sole competent judges, are fitly governed by usage and controlled by precedents. “They are,” says Lord Clarendon, “the only judges of their own privileges; but that their being judges of their own privileges, should qualify them to make new privileges, or that their judgment should create them such, was a doctrine never before now, heard of” (a).

And if,—when they suppose themselves, to be only recognizing an old privilege, they are in reality, creating a new one, is it not too much to contend that their not ill intentioned mistake, may not be corrected; that their erroneous judgment, when brought before the sworn judges of the land sitting to administer justice according to law, in all cases brought judicially before them; neither seeking—nor declining,—but only conscientiously deciding questions which must be decided,—that a judgment, of which they, the recognized interpreters of the law, discover the unsoundness, must be received as valid,—allowed,—adopted and enforced by the judges sworn to do the right—and, all the while perceiving this to be the wrong! Is not this absurd and most unreasonable? Is it not monstrous?

It is, also, impracticable. The attempt to withdraw the ultimate determination of questions of privilege, coming in question in cases within the jurisdiction of the respective Courts, from the Courts of Common Law;—from those

(a) Hist. Rebell. vol. 2, Book 4, 398.

Examinable,
in certain un-
avoidable
cases.

Courts, in which the prerogatives of the Crown are subject to be questioned and overruled,—will never succeed. Parties and their witnesses, judges, officers, sheriffs, counsel and attorneys, may all be, again and again, committed; but fresh actions will be brought, and succeeding judges, officers, and professional men will do, what they deem, their duty.

Rule.

Exception.

Is it not better then, to acquiesce, in the known, settled, and single, exception to the rule, that the members of the two Houses respectively, are the sole judges of their own privileges; *except* when they come in question incidentally and collaterally before the Courts of Law in the way of suit or action;—or when the House has no jurisdiction over the subject-matter:—in both of which cases the appointed constitutional expositors of the law, must inquire into and determine the question, to prevent a failure of justice?

And if such be the reason and justice of the case, how stands it upon the foot of precedent and authority?

Precedents.

The counsel for the House of Lords in Lord Shaftesbury's case (*a*), the Attorney General (Jones), himself admitted, "that, if an action be brought where privilege is pleaded, the Court ought to judge of it; as an incident to the suit, whereof the Court is possessed."

The same rule was laid down by Lord Chief Justice Holt, in the case of the Aylesbury men (*b*).

The same doctrine was recognized by Lord Chief Justice De Grey in Brass Crosby's case (*c*). "The counsel at the bar," my Lord said, "have not cited one case, where any Court of this Hall, ever determined a matter of privilege, which did not come incidentally before them."

And this result of the cases was referred to with commendation, by Grose, J., in *R. v. Flower* (*d*).

All these eminent authorities, agree in the right and the duty of the judges, to take conusance of the privileges of Parliament, when questions concerning those privileges are brought incidentally in judgment before the Court in

(*a*) 2 State Trials, 605. 1 Mod.

144.

(*b*) 8 State Trials, 162.

(*c*) 3 Wils. 202.

(*d*) 8 T. R. 345.

actions by parties complaining of injuries within the jurisdiction of the Court. “When in a common action, the “privilege of Parliament does come to be part of the plea “or justification, it is of necessity,” says Sir Orlando Bridgman, “that the privilege set up to defeat the action, “whether there be such, and what the extent of it, come “also into consideration.” (a). Authorities.

This, the sworn duty of the judges of the land, is confined however, to cases of privilege brought judicially before them. The judges will decline to pronounce an opinion upon privilege of Parliament, except where the question comes before them in a legal way;—as they did in Thorpe’s case: and *then*, (when it is in such manner, forced upon them); the highest authorities concur in holding, that they are bound to take cognizance of the existence and extent of the privilege, and to decide upon it. “If a question arise, “determinable in the King’s Bench, the King’s Bench must decide it;” said Lord Holt in *R. v. Knollys* (b).

And even Mr. Justice Powell, whose opinions were ever strong and decided in favour of Parliamentary privilege, recognized in *R. v. Paty* (c), this single exception to the doctrine of exclusive jurisdiction in Parliament. “This “Court,” he said, “judges the privilege, only incidentally; “for when an action is brought in this Court, *it must be “given one way or the other.*”

Mr. Justice Patteson made the same remark in *Stockdale and Hansard*; with the addition that the judgment he was compelled to give, should be the conclusion of his own mind, and not the dictation of others. To the same effect are the judgments of the other judges in the modern cases.

Such is believed to be the sound doctrine upon this delicate and difficult subject, and it will be found to admit all the claims of the two Houses to the determination of questions of privilege, which can be supported upon a temperate consideration of the subject; and to reject such views alone, as are not only not consonant to reason, or agree-

(a) Benyon and Evelyn, T. 14, Car. 2, Rot. 2558.

(b) 2 Salk. 509.

(c) 2 Lord Raym. 1105.

able to law, but are also, repugnant to the spirit of the constitution.

Summary.

It will have been collected from the preceding pages, that the two Houses of Parliament respectively, are empowered to try questions relating to their own privileges, (in which they are consequently parties); by a peculiar law of their own. That they are ordinarily, the sole judges and interpreters of that law: and it will be seen subsequently, that they themselves, execute their own decrees, by officers of their own. This anomalous and most extensive authority, they indisputably possess, and it may be essentially necessary to the free and independent exercise of their high, constitutional functions, that they should be invested with such extraordinary powers.

But this is not all. The peculiar law, by which these cases are governed, is not enunciated; is unascertained *a priori*: which necessarily subjects Englishmen, (in this one particular instance) to the dominion of the *jus vagum et incognitum*, said to be ever, the worst species of tyranny. And the law being thus kept undivulged in the breasts of the judges, is, (as is avowed by the indiscreet advocates of indefinite privilege), extendible, at their pleasure, to all other cases, *pro re natâ*. How desirable is it; that such an authority, should have some circumscription!—the limitation of usage; the control of precedents.

And these extraordinary powers, are not deemed sufficiently transcendent, but it has been unadvisedly contended that every decision of Parliamentary privilege in either House, however erroneous it may, by possibility, be; shall be final and conclusive. And every extravagant excess of jurisdiction; every assumption of power, however arbitrary and unfounded, shall be withdrawn from the control of the Common Law!

The true doctrine:—that the law of Parliament is determined by regular custom;—the rule: that the determination of privilege belongs to the two Houses respectively;—the qualification: that, although they may generally expound, they must not extend it; with the excep-

tion:—of cases not within the jurisdiction of the House;* Summary.
or where privilege is brought before the judges incidentally,
as matter of excuse or justification imported into a cause,
and absolutely requiring their judgment:—the general doctrine,
the rule and the exception, are believed to have
been all, before correctly stated.

Happy will be the result, if a dispassionate consideration
of the principles and authorities; the law and practice;
shall tend to settle the distressing doubts which have long
existed; shall contribute to terminate those fraternal conflicts
between the Legislature and the Judicature, which
the best and wisest men, will see the most reasons to
deplore. And are not some traces perceptible of an
approximation to this desirable end;—this legislative
and judicial unanimity?† Cannot future collisions be
prevented?

As regards the past, no slight errors have been committed
on both sides; but when questions come to be calmly considered,
when the voice of reason is attended to, juster
views will gradually obtain, and sounder principles become
established.

Errors in the
past, on both
sides.

The claim on the part of the Parliament to be governed by
a peculiar law, has been sometimes too lightly questioned.
The *lex Parliamentaria*, has been said to be merely a part of
the *lex terræ*; like the ecclesiastical, military, or maritime
laws; *leges* indeed; but *sub graviore lege*: to be construed at
all times by the Common Law Courts in the ordinary way.

But such is *not* the case with the *lex Parliamentaria*,
which is 1st, a peculiar law of a special nature, and 2ndly,
is confessedly to be construed by the Parliament itself;
and only determined by the Judges in extraordinary cases,

* As, *e. g.* if the House of Commons were to claim to determine
questions of property without a jury; or to inflict punishments for not
taking an oath, which they have no power to administer; cases not
likely to occur now, but used for illustration.

† *Quære tamen*: the result of the best intentioned endeavour to
reconcile these big and little endians, may be *that* described in Alma:

“Dear Dick, if we could reconcile

“Old Aristotle with Gassendus;

“How many would admire our toil,

“And yet, how few would comprehend us!”—*Prior.*

Errors in the
past, on both
sides.

when they cannot escape from deciding it. And then, whatever the Court, superior or inferior, the case is always to be tried by the law of Parliament. In this respect then, some *scintillæ* of doctrine have been advanced, which cannot, it is apprehended, in strictness be supported.

On the part of the House of Commons, extravagant claims of privilege,—unwarrantable extensions of jurisdiction, and unfounded assumptions of power, have been at various times preferred and abandoned (*a*); but it was never denied that the wish and intention of the House, was still to act fairly and equitably, while maintaining its own dignity and authority, with sometimes a little undue jealousy and precipitancy,—and an excess of animation.

On the other hand, the great anti-privilege champion, Lord Holt, who made so glorious and successful a stand, though almost unsupported, in *Ashby and White* (*b*), when a most valued right of the subject was in danger to be defeated by privilege, (as the House of Commons were pleased to claim it; resting their case on that untenable ground, rather than on a plausible hypothesis of judicature); who most luminously laid down the great general principles of the law, and based it upon grounds from which his successors are not likely to depart; who reasoned irresistibly, that, as Parliament had only circumscribed powers, if it exceeded those, it must, like every one else, that has exceeded his powers, be corrected; even Lord Holt was not always infallibly right in every particular decision of these questions.

When Paty was brought up on *habeas corpus*, and the cause shewn, was commitment for a certain act which the House voted a contempt, the Chief Justice stood alone and dissented from all the other judges, who held that the prisoner must be remanded (*c*); thus resisting the authority of Shaftesbury's case, who was committed "for high contempts" of the House of Lords, without showing when,—where,—or how, committed (*d*); an authority to which Lord Chief Justice De Grey, Lord Ellenborough, and Lord Denman himself, with

(*a*) See the case of Floyd, *post.* Hatsell.

Admiral Griffin's Fishpond case,
9 Ad. and El. 14. *et al. ibid.*

(*c*) Lord Ray. 1105. 3 Wils. 205.

(*d*) 6 Howell's St. Trials, 1269.

(*b*) 17 L. J. 714.—App. 3,

all the judges of our own times, have (it may be with reluctance in some instances), conformed. For the power of commitment for a contempt, must belong to every legislative and judicial body. And when it appears that the House has adjudged the offence to be a contempt, the Court, it is said, is bound to give credence to that determination. If the House professes to commit for a contempt, and the commitment is in a general form, the contempt cannot be inquired into: "the adjudication is a conviction, "and the commitment in consequence an execution." To prevent a conflict of jurisdictions, no Court can discharge a person in execution by the judgment of another Court of competent jurisdiction. A Court, which is not a Court of Error or Appeal, cannot entertain the question whether the authority has been properly exercised in another Court (*a*). Lord Holt, indeed, did not question the power of commitment in the House of Commons in Paty's case; but he thought the warrant itself, in that case, shewed an excess of jurisdiction; and so, left his opinion not irreconcilable with Shaftesbury's case, which has always been supported and followed, where the commitment was in a general form.

But if, instead of a commitment in a general form, a return were to shew a cause which could not by any possibility be construed, agreeably to sound reason and natural justice, to amount to a breach of privilege;* if there were on the face of the warrant itself evidence of an absence of contempt, Lord Ellenborough plainly intimated in *Burdett v. Abbott*, that in such case the Court would "do its duty" (*b*). He had before, in the same case, repudiated the doctrine that where a contempt was charged, the Court would not

(*a*) 5 Dow. 199.

(*b*) 14 East, 1.

* See 1 Hargrave's Juridical Arguments, as to "reconsidering this "doctrine of the unappealable and unexaminable nature of commitment for contempt." He puts the case of the Lords sentencing a person to work in Bridewell for his life, as was actually done by the Lords in 1684; and supposes it to be for suing out a writ of habeas corpus to examine the legality of a former commitment by the Lords. But does not say how that is to appear!

Commitments
for contempts

look at the warrant and judge of its formal sufficiency; though he certainly gave full effect to the doctrine in Shaftesbury's case.

It will not be denied that whatever the strict law may be, (and that cannot be questioned after the decision of *Burdett and Abbott*, in the House of Lords (*a*)); yet, agreeably to natural justice, the imputed offence should always appear on the face of the warrant sent with the prisoner, in order that, as was well expressed by Chief Justice Vaughan, in *Bushell's case*, "the cause of commitment should appear as plainly to the Court before which the commitment is returned, as to the Court who made the commitment" (*b*). When the Lord Chancellor for the time being, committed a member of the House of Commons, (Mr. Lechmere Charlton), for a contempt, the committee appointed by the House to inquire into that case, called for the particulars of his contempt; and rightly so, to enable them to judge whether they were really such as to warrant his commitment (*c*). But after the House of Commons had imprisoned the Sheriff of Middlesex, for executing the process of the Court of which W. E. and J. W. were the officers, the House was persuaded to make a return to a writ of *habeas corpus*, not shewing "the particulars of the contempt," to enable the Court of Law to judge of its sufficiency (*d*).

Now this was not "doing as they had been done unto;" it was not agreeable to morals or religion, according to Tully or Saint Paul; but the Attorney General was just able to say, that it was "according to law." For, where care is taken to make the commitment general, Lord Shaftesbury's case stands unimpeached; and men to whom the bare necessity to stand sheltered under a technicality, would of itself, in private life, excite suspicion that they were not following the pure and high line of conduct; who would feel that there was something abhorrent from a frank and loyal nature, in withholding any part of the truth from judicial inquiry; and most of all *that* part which might rescue a prisoner from

(*a*) 5 Dow. 199.
(*b*) Vaughan, 137.

(*c*) Parl. Rep. 1837, No. 45.
(*d*) 11 Ad. and El. 273.

confinement; yet acting as a body and influenced by an *esprit de corps*, the same men are carried away by a desire of victory, and do not sufficiently weigh the means for attaining the end. Others little comprehend what they are doing, and would, if competent to judge of it, be very much ashamed of the dexterity by which they succeed. "It would be unseemly," says Lord Denman, "to suspect that a body acting under such sanctions as a House of Parliament, would, in making a warrant, suppress facts, which (if disclosed) might entitle the prisoner committed to his liberty. If they ever did so act, I am persuaded that on further consideration they would repudiate such a proceeding. What injustice might not have been committed in past times if such a course had been recognised; as for instance, if the Recorder of London, in Bushell's case, had in the warrant of commitment suppressed the fact, that the jury were imprisoned for returning a verdict of acquittal. I am certain that such will never become the practice of any body of men amenable to public opinion. In Brass Crosby, Burdett's and Hobhouse's cases, words were used shewing the nature of the contempt" (a).

Commitments for contempt in general form.

Nevertheless, though the judges in this case perceived and regretted the *suppressio veri*, and fully appreciated the motive, they did not swerve from their line of duty. In this, the strongest possible case, where it was notorious that the prisoners were their own officers, committed whilst acting in the lawful execution of the process of the Court, the Judges of the Court of Queen's Bench, finding the warrant general in form, acted upon the doctrine of Shaftesbury's case, and remanded the prisoners. The same (b) course had been taken by the judges of each of the other Courts, in similar cases. And as the Courts of Law, have thus been conspicuously, and most creditably seen, in the case of their own officers arrested while acting in obedience to the rules of the Court, to lay aside all personal feelings, (prejudice and passion enter not into the elements of

(a) 11 Adolphus and Ellis, p. 292.

(b) C. P. in Crosby's case, 3

Wils. 203; Exchequer in Oliver's case; cases of Murray, Burdett and Hobhouse, in K. B.

justice); and to act only upon the circumscribed views of the law; so may the Parliament, before a long time has elapsed, not only be found to repose full confidence in the integrity of the judges, submitting their privileges fearlessly to their upright decision; but will probably also be seen vying with the Courts of Law in forbearance and self-control. Then may they be found to magnanimously renounce, to spontaneously divest themselves of, so frightful a power, (amounting to a virtual repeal of the *habeas corpus* Act);* as the use of commitments in a general form.

General warrants.

General warrants they will not permit to the Crown, even in cases of high treason and rebellion; and in calmer times they may renounce them, when they are themselves engaged in a squabble with a bookseller or an attorney. They may become themselves desirous, (as they will never wish to possess any privileges which are not just in themselves, essentially necessary to the discharge of their important functions, and really beneficial to the community); that their claims of privilege may stand the test of forensic inquiry, and receive the added sanction of the highest judicial authority. This would, at least, be a recommendation of their exclusive privileges to the people, and might conduce to a better feeling, both as regards the use of privilege and the interference with the administration of justice, than at present exists.

Interference with the Courts.

When the course of justice is allowed to flow unimpeded, decisions are seldom unsatisfactory. Whenever the Parliament has stopped, or tried to stop, actions at law, menaced suitors and witnesses, and interrupted the regular administration of justice in the due course of law, it has never been with advantage to the character, or authority, or dignity of Parliament. It has always been viewed by the country in the light in which it is placed by the resolution of the Lords

* In 1704, the Lords resolved that "every Englishman, who is imprisoned by any authority whatever, has an undoubted right to a writ of *habeas corpus*, in order to procure his liberty by due course of law." The law of commitment for contempt; says, according to Hargrave: "You shall have a *habeas corpus*; but it shall answer no purpose to you; for, however illegal the commitment, the judges shall not be permitted to set you at liberty."—*Juridical Arguments*, p. 14.

in Paty's case: "That the deterring parties from prosecuting
" actions in the ordinary course of law, and terrifying
" attorneys, solicitors, counsellors, and serjeants-at-law from
" soliciting, prosecuting, and pleading in such cases, by
" voting their so doing to be a breach of the privileges of
" the House of Commons, is a manifest assuming a power
" to control the law, to hinder the course of justice, and
" subject the property of Englishmen to the arbitrary votes
" of the House of Commons." (a)

In vain has the House of Commons attempted to place
its privileges on the foot of unquestionable and unlimited
power. "The Court of Queen's Bench decided in Stock-
" dale and Hansard (b), that there was no power in this
" country above being questioned by law; and I abide by
" that judgment," said Lord Denman (c).

May exact boundaries be ascertained and solid principles
established; may the Parliament and the law flourish irre-
spective of each other; yet each lending to the other its
separate support and sanction! In the unavoidable conflict
of laws and jurisdictions, may the general law of the whole
empire, the superintending, controlling Common Law,
prevail in the first instance, but subject to revision in
ascending Courts of Error; ever remembering that the real,
ultimate, last resort of judicature is, in the whole legislature
of Kings, Lords, and Commons, to correct all mistakes, and
to repair every possible wrong!

In addition to the usual claims of privilege, Sir Arnold
Savage, 5 Hen. 4, further desired the King, in the name of
the Commons, that they might freely make complaint of any-
thing amiss in the government, and that the King, by the
sinister information of any person (d), would not take
offensively that which they should complain of in that
behalf; which petition was yielded unto by the King.
Accordingly (e), two years afterwards, (an. 7 & 8), the
Speaker told his Majesty plainly, in open Parliament
that "his House was far more chargeable, and yet less

Permission to
grumble.

(a) In 1702.

(b) 9 Adol. & El. 14.

(c) Case of the Sheriff of Mid-

dlesex. 11 Adol. and Ellis, 286.

(d) Hakewill, 203.

(e) 7 and 8 Hen. 4.

“honourable than any of his progenitors;” and it was well taken by the King.

Freedom of
access for the
Commons.

This was an uncourtly version of the claim of freedom of access for the Commons. As hereditary counsellors of the Crown the peers always possessed this privilege, both collectively and individually. And Elsynge says (a) “that it was ever enjoyed by the Commons; who, with their Speaker at their head, were always admitted to the King’s presence, and did oftentimes propound matters to the King, which it was not given them in charge to treat;” of which Sir Arnold Savage seems to furnish an example. Still, though freely exercised without question, the claim as *of right* may be important, and the assertion of it amount to a valuable constitutional privilege. Occasions may arise in which the attendance of the whole House in person will be felt desirable, to give full effect and added weight to a seasonable address, in preference to its silent and sullen, not to say smuggled, presentation by members who are privy councillors.

A favourable
construction of
their proceed-
ings.

As to the covert claim to “a favourable construction of their proceedings;” under the words, that the King would not, by sinister information, take their complaints offensively; that is another of the Speaker’s claims at the opening of Parliament, and is regarded by some as a mere normal complaisance. But it was really used to inculcate the true constitutional doctrine of the non-interference of the Crown with matters pending in Parliament. The King cannot properly take notice of any thing said or done in either House. Henry 4, promised (b) that he would not “hear any person, nor give him credit, before such matters were brought before the King, by the advice and assent of his Commons:” which is the true law and custom of Parliament.

Privileges, &
demands of
right; so made
but once in a
Parliament.

Speakers elected to the chair, on vacancies in the middle of a Parliament, always confined themselves to making their own apology and excuses. For the petitions for privileges being (c) *demands of right*, ought to be made but once, at the beginning of a Parliament.

(a) Elsynge, 181.

(b) 3 Rot. Parl. 456.

(c) Journal, 14 March, 1694.

Privilege, at first, was the claim generally of members of the High Court of Parliament. But the two Houses, now distinct branches of the Legislature, must be taken to be invested with all the essential privileges which antecedently to their separation belonged to the aggregate body of the Parliament, so far at least as they have been subsequently evidenced by enjoyment. Supposing the separate existence of the House of Commons to have begun only in the 49 Hen. 3, or at some other period within the time of legal memory; yet if the Parliament itself, in any anterior form of its existence, be of prescriptive antiquity, (about which no reasonable doubt can be entertained); the same privileges then enjoyed by it, may be prescribed for by Parliament, in the form into which it has since resolved itself, and now subsists (*a*). It will follow that privileges claimed by the House of Commons, if evidenced by enjoyment, need not strictly be prescribed for.

Privileges need not be prescribed for.

Since the 10 Geo. 3, c. 50, all claim of protection for member's lands and goods (*b*), and all privileges of domestics, being by that statute taken away, and all other privileges which obstruct the ordinary course of justice being abolished, the privileges of speech and of person are the most familiar of those which remain to be considered. The principle on which these privileges have formerly been claimed and allowed, is thus broadly, and somewhat diffusely stated:—"As it is an essential part of the constitution of every Court of Judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such Courts, whether as judges or as parties, should be intitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest Court in this kingdom, that the members who compose it should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other

Principle on which claimed.

(*a*) Lord Ellenborough, *Burdett and Abbott*, 14 East, 140.

(*b*) 2 Hats. 217. 5 T. R. 686.

“call, not so immediately necessary for the great services
“of the nation” (a).

Freedom of
speech.

The Speaker's petition for freedom of speech is not recorded before 33 Hen. 8, when it was made by Thomas Moyle, Speaker. But though not formally claimed, neither, says Elsynge, was it ever denied them; for the Commons would never suffer any uncomely speeches to pass of private men in their House, much less of the King or any of the Lords (b). “They did oftentimes, under Ed. 3, discuss
“and debate among themselves, and agree upon petitions
“for laws to be made directly against the prerogative, yet
“they were never interrupted in their consultations, nor
“received check for the same, as may appear by the
“petitions and answers.”

Haxey's case.

Haxey's case, (frequently called Sir * Thomas Haxey, being a clerk in orders), must perforce appear somewhat at variance with this statement. In the 20 Rich. 2, Thomas Haxey, a member of the House of Commons, (and proxy of a peer in the House of Lords, it is now said), having brought forward a complaint of the excessive charges of the King's household, arising from the multitude of bishops and ladies maintained at the royal (or rather at the national) cost, the King directed the Duke of Lancaster to make the Speaker † give up the name of the person who presented a bill for this article in the Lower House. The Commons (c), in trepidation, surrendered the obnoxious bill, with its pro-

(a) 1 Hats. 1, 2.
(b) Elsynge, 177.

(c) Hallam's Mid. Ages, vol. 2,
c. 8, 281.

* A title at that time regularly given to the parson of a parish.

† “*Le noun de celui, qui bailla as ditz communes la ditte bille.*” It appeared by the report of a committee appointed to search for precedents respecting the eligibility of the clergy to sit in the House of Commons, (Horne Tooke's case), that no such name as Sir Thomas Haxey exists in the returns of 20 Rich. 2, which are extant and perfect in the Tower. While it is found by a record in Rymer's “*Fœdera*,” tom. 3, p. 844, that proxies were appointed for the Earl of Nottingham, then in Picardy, “*sub nominibus Willielmi Bagot Chivalier, et Thomæ Haxey, clerici.*” No doubt, however, exists of the fact of Haxey having been a member of the House of Commons. See *post*, the proceedings of the Commons to have the judgment against him annulled.

poser. Haxey was adjudged in Parliament to suffer death as a traitor; but being a clerk, the Archbishop of Canterbury, at the head of the prelates, obtained of the King that his life might be spared.

Elsynge, in order to reconcile this arbitrary proceeding, in open defiance of Parliament, with his doctrines before cited (*a*), relates that Sir John Bussye, "one of the King's "minions, being Speaker," had privately communicated the proceedings to the King, and "you may see," observes the practised clerk, "how the King did cast about to have this "matter related to him *in* the Upper House; neither can "it appear by any ancient record, that the King did ever "take notice of any of the Commons' speeches or consultations, until they were reported to his Majesty in open "Parliament:"—it being, as before stated, an established maxim of Parliamentary law, that the King ought not to take notice of matters pending in Parliament (*b*).*

On the accession of Henry 4, the judgment against Haxey, was annulled by the King, with the advice and assent of all the Lords spiritual and temporal. The Commons were not content with this, but prudently required that the whole Legislature should concur in the reversal of the judgment; "as well for the furtherance of justice, as for "the salvation of the liberties of the Commons." The King and Lords agreed with the Commons, that it should be annulled and held of no force or effect, by their common determination.

After this case of Haxey, the earliest recorded attempt to restrain the freedom of speech in the House of Commons, Young's case.

(*a*) Elsynge, 189.

(*b*) 2 Hats. 333.

* See Appendix to 2 Hats. No. 7, a declaration, petition, and remonstrance agreed to by both Houses, after a conference held 14th Dec. 1641, "That the fundamental privileges of Parliament have been "broken by the King's taking notice of a bill that is passing, before it "be represented unto his Majesty by the consent of the Lords and Commons." The invariable course of passing a bill by petition and answer, of itself affords a constitutional argument against the King's deliberative interference in legislation, at any earlier period than the royal assent; or evasion of concurrence, *s'avisera*.

occurs in the case of Mr. Thomas Young, member for Bristol, 33 Hen. 6, who complained (*a*) to the Commons, "that for matters by him shewed to the House, &c., he was therefore taken, arrested, and rigorously, in open wise, led to the Tower of London, and there grievously in great duresse, long time imprisoned, against the said freedom and liberty:"—with much more to the like effect. The Commons transmitted this petition to the Lords; the King willed that the Lords of his council do and provide as in their discretions shall be thought convenient and reasonable."

Strode's case.

Again, antecedent to the 33 Hen. 8, Mr. Strode, a member, having proposed a bill in Parliament for the regulation of the tinnors in Cornwall, was prosecuted in the Stannary Courts for that offence; and there being condemned in a large sum of money, was imprisoned in Lidford Castle, whence he was delivered by a writ of privilege: but not till he had given security to save harmless the warden's deputy, in whose custody he was. An Act of Parliament immediately passed, to annul and make void these several judgments and executions: and it was further enacted, that all suits, condemnations, executions, &c., had, upon the said Richard, and to every other of the person or persons that now be of the present Parliament, or that of any Parliament thereafter shall be, for any bill, speaking, &c., be utterly void. These general words have operated to make this enactment a general subsisting law, in the opinion of Sir Edward Coke, Prynne, and other great lawyers, ancient and modern (*b*). And not only is this the opinion of the profession, though contrary to the authority of an adjudged case (*c*), but it is now so declared by the formal resolutions of both Houses of Parliament. And that it extends, to indemnify all members of both Houses of Parliament, in all Parliaments, for and touching all bills, speaking, &c., of any matters in and concerning the Parliament to be communed and

(*a*) Hallam, vol. 2, c. 8, 281.

(*b*) Lord Ellenborough, in Burdett and Abbott, 14 East.

(*c*) Sir J. Elliot and Holles' case, 7 Chas. 1; 7 State Trials, 249.

treated of, and is only a declaratory law of the ancient and necessary rights and privileges of Parliament (*a*).

But this privilege, so essential to the very existence of a free council, so freely exercised under Edward 3 and Henry 4, and so constantly demanded as of right, by every successive Speaker posterior to 33 Hen. 8, was frequently cavilled at by the courtiers of the reigns of Queen Mary and Queen Elizabeth, as intrenching upon the royal prerogative, and the House, it must be owned, in part, perhaps, from gallantry towards Queens, acquiesced in general too easily in these doctrines. "It was reserved," (so Mr. Hatsell (*b*) excellently expresses a generous sentiment) "for a more enlightened age, and for times when the true spirit of liberty should be better understood, to ascertain and establish this privilege in its utmost extent, consistently with the language of good-breeding, and the behaviour of men of liberal education."

The next case which occurs, (mentioned by Hatsell as the earliest instance of the Crown's interference with this fundamental privilege), is in 1571,—That of Mr. Strickland; which was taken up by the House not only, as he states, with spirit, but with very great warmth, and was followed by the immediate submission of the council. That gentleman (Mr. Strickland) had brought in a bill for reformation of the book of Common Prayer, and for this measure had been called before the Queen's council, and commanded by them "to forbear going to the House till their pleasure was further known" (*c*). This proceeding being complained of in the House, Mr. Treasurer said, "He was in no sort stayed for any word or speech by him in that place offered, but for exhibiting a bill into the House against the prerogative of the Queen, which was not to be tolerated." This doctrine being supported by another privy councillor (*d*), was answered by Mr. Yelverton,

Strickland's case.

(*a*) Com. Jour., 12th Nov., 1667; Lord's Jour., 11th Dec., 1667.

(*b*) 1 Hats. 126.

(*c*) D'Ewes, 166. 4 Parl. Hist. 153.

(*d*) 1 Hats. 64.

in a speech, which for its spirit of freedom, its manly sense, and exact knowledge of the constitutional powers of the House of Commons, was not to be exceeded even, says Hatsell, by that Parliament which established and confirmed the Revolution.

“First,” he said, “the precedent was perilous: and though, “in this happy time of lenity among so good and honour-
“able personages, under so gracious a Prince, nothing of
“extremity or injury was to be feared; yet the times might
“be altered, and what now is permitted, hereafter might be
“construed as of duty, and enforced even on the ground of
“the present permission. He further said, that all matters
“not treason, or too much to the derogation of the imperial
“Crown, were tolerable there, where all things come to be
“considered of; and where there was such fullness of
“power, as even the right of the Crown was to be deter-
“mined. Besides, that the speech uttered in that place,
“and the offer made of the bill, was not to be condemned
“as evil.”

Nevertheless, this alarming power of committing members for a supposed breach of the prerogative by their speeches in the House of Commons, continued to be exercised by the ministers of the Crown in the succeeding reigns (*a*).

Sandys' case.

Of the several instances that follow, the case of Sir Edwyn Sandys, in 1621, is on many accounts the most memorable; but chiefly so, because it produced the famous “PROTESTATION” in vindication of the rights and privileges of the House, which occasioned the immediate dissolution of that Parliament (*b*).

The King having written to the House of Commons, “We cannot allow of your style—calling it ‘your ancient
“‘and undoubted right and inheritance,’—but could rather
“have wished that you had said that your privileges were
“derived from the grace and permission of our ancestors
“and Us;” a committee of the whole House was appointed

(*a*) D'Ewes, 410. Cases of Cope, Wentworth, and others. (*b*) 1 Hats. Prec. 137.

to meet the next morning, "to consider all things incident
"to, or concerning, the privileges of the House:" and
having met, with the assistance of Sir Edward Coke, Mr.
Noy, and Mr. Glanville, prepared the celebrated Protest:

Protest of the
Commons.

"That the liberties, franchises, privileges and jurisdic-
"tions of Parliament, are the ancient and undoubted
"birthright and inheritance of the subjects of England;
"and that the arduous and urgent affairs concerning the
"King, the state, and the defence of the realm, and of the
"Church of England, and the making and maintenance of
"laws, and redress of mischiefs and grievances which daily
"happen within this realm, are proper subjects and matters
"of counsel and debate in Parliament: and that in the
"handling and proceedings of those businesses, every
"member of the House hath, and of right ought to have,
"freedom of speech to propound, treat, reason, and bring to
"conclusion the same;" which having been read several
times, was allowed and ordered to be entered of record in
the Journal of the House; and which (though the King, by
"sending for the Journal, and striking out the entry with
"his own hand," was in hopes to have obliterated all traces
of), is still preserved, and will (a) for ever remain, a me-
morial of the true spirit and firmness, the temper, modera-
tion, and wisdom, of the great men who (b) directed the
councils of that Parliament, and of whom several of the
principal, will be found to have belonged to the liberal as
well as learned profession of the law.

Valuable ser-
vices of the
lawyers.

Indeed, it is to the sagacity, research, prudence, skill, and
above all, to the courage of the lawyers of that period, that
this country is almost entirely indebted for possessing its
present perfection of civil liberty. Whitelocke truly said,
that "those in power had most occasion to be displeased
"with this profession, as a bridle to their power." When
Wolsey went with state and pomp to the House of Com-
mons, to overawe the House into the grant of a Parliamen-
tary aid, who was it that had the firmness to tell him, "that

(a) 1 Hats. 138.

(b) Parl. Hist. vol. 5.

“his manner of coming thither was neither expedient, nor agreeable to the ancient liberties of that House?” (a). —who framed the Petition of Rights?—to whom are we principally indebted for the Bill of Rights?—who unavailingly advised proper terms and conditions, with due limitations, upon the power of the Crown at the Restoration?—to whom do we chiefly owe the principles established at the Revolution? (b)—Fortescue, Sir Thomas Moore, Coke, Selden, Hale, Somers, Whitelock, are all names gloriously distinguished for services to the national freedom. Other bright names have a different praise, — Bacon, Clarendon, &c.

It is observable, that in all these cases it was pretended by the ministers, that such commitments were not for any liberties taken in speeches, but for offences of another sort committed out of Parliament; “well knowing,” says Hatsell, “that if the Parliament could be deluded by these pretences, their end would be equally attained. If this claim, set up by James 1, and Charles 1, to imprison the members of either House, at any time, and under any pretence, could have been established, it would have made no inconsiderable part of that system of prerogative government, which they were so desirous of erecting.”

Sir John Elliot
and Holles's
case.

The great case of Sir John Elliott, Holles and Valentine, in which the judgment proceeded upon the mistaken ground that the act in Strode's case, was a private act, was a prosecution of those members for their conduct in Parliament (c); when the House of Commons asserted “their indubitable and essential right of freedom of speech, and personal freedom of their members,” and refused to proceed to any business till their members were restored to them.

“The last violent and fatal step taken by that misguided monarch (!) (Charles 1), which was subversive of every idea of privilege in the House of Commons, and precluded all

(a) 3 Hats. 1. Sir Thomas Moore, Speaker.

(b) See Amos's Fortescue, *passim*.

(c) See 9 Com. J. 25. 12 L. J. 166, that this was an illegal judgment and against the freedom and privilege of Parliament.

“hope of reconciliation with his Parliament and people, was
“the going in person and endeavouring to seize the mem-
“bers whose freedom of speech had displeased him” (a).

The judgment against Elliott, Holles, &c.; was reversed by the House of Lords, in April, 1668, after the Restoration (b); and Strode’s Act was resolved by both Houses of Parliament to be a general law.

By the Bill of Rights, it was expressly and legislatively declared, at the Revolution, as one of the fundamental liberties of the people; “that the freedom of speech and
“debates and proceedings in Parliament, ought not to be
“impeached or questioned in any Court or place out of
“Parliament” (c).

Affirmed by
the Bill of
Rights.

The instances of serious invasion of this indispensable privilege principally occur where they were chiefly to be apprehended, from the power of the Crown. Interference on the part of the Executive would naturally be regarded with greater jealousy than any stupid contempt or perverse obstructions from other quarters. Still there can be no reasonable doubt that any attack or reflection from any other quarter, either upon the House collectively, or upon the members who compose it, as individuals; for any motion, debate, question, resolution, statement made, or decision come to, in the regular course of Parliamentary proceedings, would be visited with censure and punishment, as involving an undoubted breach of useful privilege. Accordingly, in an (d) instance (not perhaps a very discreet one), in 1559, Frower, a servant of the Master of the Rolls, was ordered to attend to answer to certain evil words spoken by him against the House, saying, “That if a bill were brought in for
“womens’ wyers in their pastes, they would dispute it, and
“go to the question;” for which offence, though he denied the words, he was committed to the serjeant’s keeping.

Attacks on
members from
other quarters
beside the
Crown.

27 Eliz. 1584. John Bland, a currier, for making dishonourable reflections on the House of Commons was

(a) 1 Hats. *ad fin.*
(b) 12 L. J. 223.

(c) 1 Wm. and Mary, s. 2, c. 2.
(d) 1 Hats. 194.

brought to the bar, and pardoned on his submission; paying twenty shillings fee to the serjeant, and taking the oath of supremacy.

Reflections, menaces, assaults, offences to members for their behaviour in Parliament.

Reflections on the speeches and conduct of members, assaults upon, or menaces to members, on account of their behaviour in Parliament, have been frequently resented as indignities to the House itself.

12 Feb. 18. Jac. 1. Mr. Lovel, a member of the House, informed it, "That one Darryel threatened his person that "for a speech spoken by him in the House, he should be "sent to the Tower during the Parliament, or immediately "after." Darryel was committed to the serjeant till the Saturday following, and then to acknowledge his fault, or be committed to the Tower.

With what limitations freedom of speech in Parliament admitted in the Courts of Law.

Privilege does not extend to published speeches.

But though a member of Parliament has privilege of speech in Parliament, and may speak in his place in either House what he thinks material or useful, whether in praise or in censure of the conduct of others, without being questioned in any place or Court out of Parliament, he is not therefore justified in publishing what he has spoken, if it contain matter injurious to the character of an individual. In the former case, in his character of a (*a*) member of Parliament, he is protected; but if, unauthorized by the House, he chooses to publish his speech, it then becomes a subject of common law jurisdiction. And the circumstance, in the latter case (*b*), of its being accurate, and intended to correct a misrepresentation, will not make him less amenable to the common law, in respect of the publication.

Reports, resolutions, Parliamentary papers.

As regards reports, resolutions, Parliamentary proceedings and papers printed, (and now sold), by the authority of either House of Parliament, considerable doubt was hitherto entertained by the most competent persons, what should be the proper rule.

It seems unquestioned that the Courts of Law will take judicial notice of the order of proceeding in Parliament and

(*a*) *R. v. Lord Abingdon*, 1 Esp. N. P. C. 226.

(*b*) *R. v. Creevy*, 1 M. & S. 273.

in committees (*a*). Of Parliamentary papers, what is printed for the use of the members, had been long established to be undoubtedly privileged. Printed for use of members.

The first case that occurs as to the publishing Parliamentary papers of a defamatory nature, was that of Lake and King (*b*), where certain Parliamentary papers had been printed, which aspersed the character of Sir Edward Lake. The defendant justified the libel he had printed, by pleading that it was only printed for the use of members. On demurrer, the Court held the plea good, because it was the order and course of proceeding in Parliament, to print and deliver copies for the use of members, whereof the Judges ought to take judicial notice. Lord Hale and the Court sustained the defence; because being necessary to their functions, it was the course to print Parliamentary papers for the use of members. And the Judges in the case of Stockdale and Hansard (*c*), considered the line drawn in this case, to be correct in law. Parliamentary papers.

A criminal information was refused for publishing the report of a committee of the House of Commons, which contained a paragraph charging an individual with having views hostile to the government; after he had been tried for treason and acquitted; on the ground, that a proceeding in Parliament could not be deemed libellous (*d*). In a later case (*e*), Lord Ellenborough expressed an inclination to lay down the doctrine with somewhat more of limitation, than was to be found in that case.

The recent and leading case of Stockdale and Hansard was an action brought against the printer of the House of Commons for a libel contained in a Parliamentary publication. The defendant justified his publication by the supposed privileges of the House to publish for sale such papers, though containing defamatory matter. The House resolved that it actually possessed the power. The Judges Printed for sale.

(*a*) *R. v. Wright*, 8 T. R. 283.

(*b*) 1 Saund. 131.

(*c*) 9 Adol. & Ellis, 1.

(*d*) 8 Term Rep. 293.

(*e*) *R. v. Creevy*, 1 M. & S. 276.

of the Court of Queen's Bench admitted that if such a privilege did exist, it would protect the printer, but held that such privilege did not exist, and that the resolution of the House would not create it. There were, and still are, lawyers, who hold opinions favourable to the privilege claimed in this case, and they may have been founded in such doctrine; but that the Judges uprightly discharged their duty in entertaining the inquiry,—arriving at, and acting upon a conviction of their own,—instead of yielding to a resolution of the House of Commons, cannot admit of a reasonable doubt. And, as no Writ of Error was brought upon the judgment, it must be now taken, that the privilege did not exist. It is unnecessary to enter more fully into Stockdale's case in this place, because by statute 3 Vict. c. 9, s. 3, "An Act to give summary protection to persons employed in the publication of Parliamentary papers"—it is provided that "proceedings, criminal or civil, against persons for publication of reports, papers, proceedings, &c., printed by order of Parliament, may be stayed upon delivery of a certificate under the hands of the Chancellor or Deputy Speaker of the Lords, or Speaker or Clerk of the House of Commons, to the effect that such publication was by order of either House of Parliament."

Now summary
protection by
statute.

Vindictive
privileges:
Protection
against insults
to members.

Although the act passed in Strode's case, 4 Henry 8, provides for the personal immunity and protection of the members themselves, for speeches made or acts done, in Parliament or concerning the same; this does not regard what Lord Ellenborough termed the vindictive privileges of the House for offences done against the body of the House generally, in breach of the rights and privilege of the whole House (a). Whilst a member may not be questioned out of Parliament for any expressions he may have used in debate, he is liable to censure and punishment by the House itself, of which he is a member. And instances have occurred, of members having been imprisoned and even expelled, for

(a) R. v. Flower, 8 T. R. 314.

offensive language and indignities to the House, and disobedience to its orders.

Thus, in 1580, Arthur Hall, a member of the House of Commons (*a*), was punished for a libel on the dignity of the House, by being committed and expelled. In (*b*) more recent cases, the Judges of the Court of King's Bench were unanimously of opinion that the House of Commons has the power of commitment of a member for a breach of their privileges. In Hobhouse's case, the House of Commons having voted the defendant guilty of a breach of their privileges for publishing a libel upon the House, and having ordered him to be committed to Newgate during their pleasure, and the Speaker's warrant being returned into the Court of King's Bench upon a habeas corpus sued out by the defendant, the Court refused to discharge him out of custody (*c*). "It was necessary," says Lord Ellenborough, in the former of the cases referred to (*d*), "that members (of "the High Court of Parliament generally) should have the "most complete personal security to enable them freely to "meet for the purpose of discharging their important func- "tions, and also that they should have the right of *self-* "protection : I do not mean merely against acts of individual "wrong ; for poor and impotent indeed would be the privi- "leges of Parliament, if they could not also protect them- "selves against injuries and affronts offered to the aggregate "body, which might prevent or impede the full and "effectual exercise of their Parliamentary functions. This "is a right essentially inherent in the supreme Legislature "of the kingdom. Can the high Court of Parliament, or "either of the two Houses of which it consists, be deemed "not to possess intrinsically that authority of prosecuting "summarily for contempts, which is acknowledged as "belonging to every superior Court of Law of less dignity, "undoubtedly, than itself? And is not the degradation

Libels on the House, &c., by members.

(*a*) D'Ewes Journal, 291.

(*b*) *Burdett v. Abbott*, 14 East,

(*c*) *R. v. Hobhouse*, 2 Chitty,

207.

(*d*) *Burdett v. Abbott*, 14

East, 1.

“ and disparagement of the two Houses in the estimation
 “ of the public, by contemptuous libels, as much an impedi-
 “ ment to their efficient acting with regard to the public,
 “ as the actual obstruction of an individual member by
 “ bodily force, in his endeavour to resort to the place where
 “ Parliament is holden ?”

Member sub-
 ject to censure
 of House for
 every part of
 his conduct.

And not only is every member subject to the censure of the House, for whatever is spoken in the House, but for every other part of his conduct (*a*).—In 1626, Mr. Moor was sent to the Tower for speaking out of season.

Sir William Widdrington (*b*) and Sir Herbert Price sent to the Tower for bringing in candles, against the desire of the House.

Mr. Hugh Benson (*c*), a member of the House, having granted many protections for money, taking for some sixteen, seventeen, forty shillings; resolved upon the question, that Mr. Hugh Benson is unworthy and unfit to be a member of this House, and shall sit no longer as a member of this House.

18 Eliz. 1575, Edward Smalley was, upon the question, adjudged by the House to be guilty of contempt and of abusing the House by the fraudulent practice of procuring himself to be arrested upon execution of his own assent, and with intention to be discharged as well as of his imprisonment as of his said execution. Smalley, and a conspirator with him, were both ordered to the Tower; and the said Smalley to remain there for a month, and after; till he gave sufficient assurance for payment of a hundred pounds to the creditor, and forty shillings for the serjeant's fees (*d*).

Freedom from
 arrest.

The next petition affecting individual members, was for freedom from arrest. This claim also was never made until of late years; yet “ this privilege,” says Elsynge, “ did ever
 “ belong to the Lords and Commons, and to their servants
 “ also coming to the Parliament, staying there, and returning

(*a*) Nalson's Introd. 61.
 (*b*) 2 Nalson, 272.

(*c*) Ibid. 596.
 (*d*) Petyt's Miscel. Parl. 16, 18.

home" (a). So Hakewill observes (b), "the petition for "privilege from arrests is of later days;" but notices that Sir J. Cheney, 1 Hen. 4, made a general request for *all* privileges, which might include it. And in Atwyll's case, 17 Ed. 4, the preamble to the Commons' petition confidently asserts the "pryvylege, that eny of theym shuld not "be empled in any action personell, nor be attached by "their persone or goods, in their comyng to any such "Parlement, there abydyng, nor fro thence to their propre "home resortyng; which liberties and franchises your "Highness, by your auctorite roiall, at commensment of "this Parlement, graciously have ratified and confirmed to "us, your said Comens:" which ratification could only have been in his Majesty's answer to the Speaker's petition.

The privilege itself, of freedom from arrest in civil suits, at whatever time first formally claimed, was certainly always exercised, and must have been coëval with the existence of Parliaments. The exemption from arrests was considered the privilege, generally, of a member of the High Court of Parliament; and the reason given for it by the Judges, applies equally to the members of both Houses, viz.: "That "they may have their freedom and liberty freely, to intende "upon the Parliament." Accordingly, Hakewill speaks (c) of it as established Parliamentary law, that "every knight, "citizen, burgess, baron of the five ports, or others, called "in the Parliament of the King, shall have privilege of "Parliament during the session of Parliament; so that he, "that doth arrest any of them during that time, shall be "imprisoned in the Tower, by the Nether House, of which "he is, and shall be put to his fine (d); and the keeper also, "if he will not deliver him when the Serjeant at Arms "doth come for him, &c. And all the privileges which do "belong to those of the Commons House of Parliament, "à fortiori do appertain to all the Lords of the Upper "House. Their persons are not only free from arrests during

Enjoyed from
earliest times.

(a) Elsynge, 184.
(b) Hakewill, 213.

(c) Hakewill, 62.
(d) Dyer, 60.

“ the Parliament, but during their lives ; nevertheless the “ original cause, is by reason they have voice and place in “ Parliament.” Freedom from arrest, of Peers, however, with great deference to Mr. Hakewill, (to whom I am greatly indebted), but whom I cannot implicitly follow in this instance ; being the privilege of Peerage, and not of Parliament (*a*), extends to peers not members of the Legislature ; viz. Scotch and Irish, (and formerly to Roman Catholic peers). The person of a peer (by the privilege of peerage) is ever sacred and inviolable (*b*). This immunity rests upon ancient custom, and is recognised by statutes, 12 and 13 Wm. 3, c. 3, and 2 and 3 Anne, c. 18.

Course of the House to provide for each particular case.

The principle, that attendance in Parliament ought not to be interrupted by the process of an inferior Court in matters of civil jurisdiction, being admitted in the earliest times, (an instance will be shewn in 9 Ed. 2), a practice founded upon it, will appear universally to have prevailed. Possessing a power that was never disputed, for the prevention of arrest or the enlargement of their members by writ of privilege, or *habeas corpus*, the course of the House of Commons seems to have been, to provide in each instance for the particular case, without procuring any general law upon the subject. There occur, indeed, in the Parliamentary Records, and in the documents brought to light by the indefatigable industry of Prynne, several instances of petitions presented by the Commons, praying the King to have their claims in this respect (and they are stated as appertaining to the whole Parliament, Peers as well as Commons) allowed and enforced by the sanction of a law ; but the answer was, that they already possessed a sufficient remedy.

Petition for a general law without success.

The present inquiry will be understood to be of necessity, almost entirely confined to the privileges claimed in the Speaker's prayer. And thus narrowed, it will be rendering a more acceptable service, to present the reader with the brief result of the cases, than to enter into any more laboured exposition of the doctrine.

(*a*) 2 Strange, 985.

(*b*) 1 Bl. Comm. 165.

In the great case of Lord Arundel, who had been imprisoned by the King, in 1625, the Lords resolved *nem con* "That the privilege of this House is, that no Lord of Parliament, sitting the Parliament, or within the usual time of privilege of Parliament, is to be imprisoned or restrained, without sentence or order of the House, unless it be for treason, felony, or for refusing to give surety for the peace" (a).

House of Lords: Lord Arundel's case.

In the House of Commons, the cases of Bogo de Clare, 18 Ed. 1, relating to the service of a citation in a privileged place and exempt jurisdiction; and of John de Thoresby, 10 Ed. 3, founded on the service of ecclesiastical process in the Court of Chancery; usually first cited, because furnished by Sir Edward Coke (b) in his fourth Institute, were thought by Prynne (c), and are declared by Sir Orlando Bridgeman in his judgment in Benyon and Evelyn, and by Lord Ellenborough in Burdett and Abbott, to have no reference to the privilege of Parliament.

House of Commons: Bogo de Clare's case.
John de Thoresby's case.

The first case which *does* (d) apply is the Prior of Malton's case, 9 Ed. 2, and it seems quite conclusive of the claim; but upon that case no judgment has been found. The original (e) writ recites the privilege as follows: "*Prelatos, comites, barones et alios, tam clericos quam laicos, in veniendo ad eadem Parliamenta, ibidem morando et exinde redeundo, ab omni-modis injuriis, oppressionibus et gravaminibus, nos oportet protegere et tueri,*" &c.

Prior of Malton's case.

In the Parliament (f), 5 Hen. 4, was a petition from the Commons to the King, in which asserting that "*ne devoient per ascun dette, accompt, trespas ou autre contrat qconque estre arester ou en ascun manere emprisonnez en le même temps;*" they pray the King "to make any breach of such privilege punishable by fine and ransom to himself, and treble damages to the party." The King answers them,

Petition for a penal law, 5 Hen. 4.

(a) And see, in the same year, Feb. 9, 1625; a stay of proceedings in the Star Chamber, granted to the Lord Vaux, on the ground of privilege, 3 L. J. 496.

(b) 4 Inst. p. 24.

(c) Prynne's Animadv. on 4 Inst. 20 Reg. 386

(d) Elsynge, 186.

(e) 1 Hats. 13.

(f) Parliament Roll, vol. 3, p. 541, No. 71.

Lark's case.

"*Y ad sufficient remede en le cas.*" That sufficient remedy was, says Prynne, their enlargement by writ of privilege or habeas corpus, which the law allowed them, in such cases, if not in execution; whereby the plaintiff lost the benefit of his arrest, and was put to the charge of new process, &c. But in Lark's case, 8 Hen. 6 (a), where the Commons prayed not only a special redress in the particular case in the discharge of their member, but a general recognition (b) by a declaratory law, that "no lords nor knights, citizens, "burgesses or others, may be arrested or detained during "the time of Parliament, except for treason, felony, or "surety of the peace;" the King (c) refused them, giving a parliamentary negative: "*Le Roy s'avisera.*" The House of Lords, in their answer to this case, when cited by the Attorney General in Lord Arundel's case, suppose the ground of this negative to have been, that the latter part of the bill comprehended more than it was at that time thought fit, the royal assent should be given to. "There is no "doubt but that any of the House of Commons being "detained in prison upon an *execution* served upon them "before the time of privilege of Parliament, or being in "execution in any ordinary course of justice before that "time, ought to be *detained* still, as is practised at this day." They then supposed that a prisoner, by being chosen a member, could not claim to be discharged; now a different doctrine prevails.

There was, however, in the case of Lark (d), an enactment, by the consent of the plaintiff's counsel, for the discharge of Lark out of custody; but there was also a saving to the plaintiff of his execution, after the end of the Parliament, and of the fine to the King for the trespass. As Sir O. Bridgeman pithily states it: "There was a "special act of Parliament for a new execution and by a "new way against Lark, but the King refused to make a "general law in it." In point of fact, it was then, and long

(a) Rot. Parl. 8 Hen. 6, No. 57.

(b) Elsynge, 217.

(c) 1 Hats. 20.

(d) Moor, 340. 5 T. R. 362.

after, considered doubtful whether privilege of Parliament extended only to arrests on mesne process, or to executions also. And accordingly in the next case, we find a fourth limitation added to the former exceptions; "if a member be arrested in such cases as be not for treason, felony, surety of the peace, or for a *condempnation had before the Parliament*, it is used that such persons be released of such arrests, and make an attorney," being the instances excepted by the Judges in Thorpe's case, 31 Hen. 6. This person, who was a Baron of the Exchequer as well as Speaker of the House of Commons, and moreover a Lancastrian, had been imprisoned during a prorogation, on an execution at the suit of the Duke of York. The Commons, as in Lark's case, where they did not act upon the claim themselves, but submitted it to the rest of the Parliament, as a matter of general concern, sent some of their members to complain of a violation of privilege to the King and Lords in Parliament, and to demand Thorpe's release. The Lords referred the question to the Judges, who, *inter alia*, stated the law of privilege as cited above. Notwithstanding this answer of the Judges, the Lords determined that Thorpe should remain in prison and directed the Commons to proceed with all goodly haste and speed to the election of a new Speaker, which they did immediately. Thorpe's case.

That, after the formal declaration of the Judges upon this occasion, and their exact enumeration of all the cases excepted out of Parliamentary privilege, the Lords should have immediately adjudged that Thorpe, who appeared to come within none (a) of these descriptions, should, according to law, remain still in prison, while the Commons cheerfully acquiesced in this decision, and immediately proceeded to the choice of a new Speaker, has created great and reasonable surprise and well-founded suspicion, and occasioned it to be repeatedly (b) mentioned, as "a

(a) Prynne, 4 Reg. 810.

(b) First by Sir N. Rich, on its

being cited in debate, March, 1620.

Thorpe's case. "case begot from the iniquity of the times." A solution of the difficulty is furnished in the case of Hodges* and Moore, 1 Car. 1, as reported by Latch (a). Thorpe, it seems, had only a *general supersedeas* for all actions, and the opinion of the Judges being taken, *that* was held ill; he should have had a *particular writ of supersedeas* for each action. Thus a technical ground, however narrow, was laid for this tyrannical proceeding. This explanation, moreover, is not inconsistent with the account afforded by Hakewill (b), who says that Thorpe was arrested in vacation, and lays it down as the doctrine of his time, that Parliament doth not give privilege *tempore vacationis sed sedente curia* only. So Elsynge (c) is reduced to the supposition that the judgment proceeded on the ground that the expression "condemnation had before the Parliament," is to be understood of such arrests as happen in the interval between the adjournment and the access. These considerations, if they do not remove all the suspicion that attaches to that case, will in some degree serve to explain the proceedings on it, and the judgment eventually given by the Parliament. The Lords, adopting the advice of the Judges, disallow the privilege claimed, because Thorpe had only a general *supersedeas*, and not a particular *supersedeas* in that suit; and because the condemnation was "before the Parliament began," being during a prorogation, not an adjournment.†

(a) Latch. 15, 48, 150, Noy. 83.

(c) Elsynge, 247.

(b) Hakewill, 63.

* In this case, Moore, having privilege of Parliament, procured the Speaker, Sir H. Finch, to write his letter in the name of the Parliament, to the Court of King's Bench to stay judgment. The Court was greatly offended at this proceeding, (which had been the practice for a century), and it is said, would have returned a sharp answer to the Parliament, (if it had not been dissolved); "because it is against the oaths of the Judges," &c.; but "the way is to procure a *supersedeas*." They also referred to what the Judges said in Thorpe's case, that "there is no general *supersedeas* brought to surcease all process; for if there were, then this High Court of Parliament should let the process of the common law, and so should put the party complainant without a remedie."

† It appears by the Rolls of Parliament, that it was then *prorogued*.

Clark's case, 39 Hen. 6, and Hyde's case, 14 Ed. 4, resemble Lark's case in many particulars, all three members being taken in execution, and it being thought necessary, in each case respectively, to have an act of Parliament to save to the plaintiff a new execution after the time of privilege; and they vary only, in its having been thought necessary or expedient in the latter cases to have the Chancellor, Sheriffs, and Warden of the Fleet indemnified: "Which," says Hatsell, "induces me to suspect that the right such persons had by law to writs of privilege and habeas corpus for their delivery, did not extend to cases of persons imprisoned under a writ of execution."

Clark's case.
Hyde's case.

Two years previous to the last-mentioned case of Hyde, occurred the case of Donne and Walsh (a), copied by Prynne from the records in the Court of Exchequer. It was a demurrer to a plea of writ of privilege. The writ recited an entire privilege of the Lords and Commons not to be imprisoned or *impleaded* during the time of Parliament. The Barons, with the advice of the judges of both the other Courts, formally declare their opinion that persons entitled to privilege, "*ratione alicujus transgressionis, debiti, computi, conventionis, contractus conjuscunque, dum sic in Parlamento Regis morentur, capi aut arrestari non debent: sed nullam hujusmodi consuetudinem fore, quod quin implacitari debent, prout in brevi illo supponitur.*"

Case of Donne
and Walsh.

There is a similar decision of the same Court of Exchequer in Ryver and Cosins, the same year, in which the Barons repeated *verbatim* their opinion in Walsh and Donne; yet, in Hyde's case (b) the King's Bench remanded Mr. Hyde to Newgate, though arrested in a civil action; and the House of Commons, in a subsequent case, renewed their claim to exemption from being impleaded. This was in Atwyll's case, 17 Ed. 4 (c), in which, however, the plaintiff's execution was expressly saved to him after the end of the Parliament; which negatives in effect, this claim of

Case of Ryver
and Cosins

Atwyll's case.

(a) 4 Register, 752.

(b) 12 Ed. 4, Rot. 7.

(c) 17 Ed. 4, No. 35.

exemption: "The inference (a) is strong. The act of "Parliament did allow the foundation, and proceeding, "and judgment against Atwyll a member of Parliament, "during the Parliament, though it discharged the execu- "tion."

Sadcliffe's case.

The next claim, in Sadcliffe's case, 1 Hen. 7, omits the privilege of not being impleaded in personal actions, which had been so often disallowed.

Benyon and Evelyn.

The last case which relates to a claim of privilege "not "to be impleaded," is of much later date, 14 Car. 2, and is only stated here by anticipation, to prevent the necessity of a recurrence to the subject. In the case of Benyon and Evelyn, 14 Car. 2, Sir Orlando Bridgman decided that the privilege of Parliament which exempted members from arrest, did not prevent an original being sued out or prosecuted against a member during the sitting of Parliament. This is the case in which Lord C. J. Bridgman gave so learned and elaborate a judgment, worthy of his common law reputation; obscured, not extinguished, in Chancery. It was an action of assumpsit for goods sold and delivered to a member of Parliament; the defendant pleaded the Statute of Limitations; the plaintiff replied that he could not sue the defendant sooner, because he was a member of Parliament and privileged from suits, the defendant denied that position, and said that though members of Parliament cannot be arrested, they may be sued. The learned judge considered himself bound to decide the question of privilege thus brought before him, lamenting the necessity. He says, "When in a common action, the "privilege of Parliament doth come to be part of the plea "or justification, it is of necessity that the privilege, whether "there be such, and what the extent of it is, come also into "consideration. For as in the register it is said of the "Ecclesiastical Court, which is inferior to the common law, "if a common law point come in question there, *non est* "consonum rationi, quod cognitio accessarii in causa christi-

(a) Sir O. Bridgman's judgment in Benyon and Evelyn.

*“ anitatis impediatur, ubi cognitio causæ principalis ad forum
“ ecclesiasticum noscitur pertinere; so I may say here, the
“ privilege of Parliament coming incidentally as part of the
“ case, as a consequent must, in this particular case, be also
“ debated here.”* The decision was against the privilege
claimed; that is, that a member had no exemption from
being sued; though such a privilege had been frequently
claimed.

Hitherto it has been seen, that when a member or his
servant has been imprisoned, the House of Commons have
never proceeded to deliver such person out of custody by
virtue of their own authority; but if the member has been
in execution, have applied for an act of Parliament to
enable the Chancellor to issue his writ for his release; or, if
the party was confined only on mesne process, he has been
delivered by his writ of privilege, which he was entitled to
at common law. The truth was (*a*), says Hallam, that with
a right pretty clearly recognized, as is admitted by the
judges in Thorpe's case, the House of Commons had no
regular compulsory process at their command.

Release of
member im-
prisoned, how
effected.

In 34 Hen. 8, Ferrers's case introduced a new mode of
proceeding in this particular. Though in custody in exe-
cution, for “ a condemnation had before the Parliament,”
the member arrested was delivered, “ not in this case, by
“ virtue of an act of Parliament—not by any writ of privi-
“ lege, but by the serjeant-at-arms, without any other
“ warrant than his mace:” “ Albeit the Lord Chancellor
“ offered them to grant a writ.” Secondly, the parties who
opposed his delivery in this novel and extraordinary manner,
(as it then was), were imprisoned by the House of Commons,
some in the Tower, some in Newgate. Thirdly, the creditor
himself, who procured the arrest, was also committed for
his contempt of the privilege of Parliament. As the matter
is condensed in a sentence of Sir O. Bridgman's judgment,—
“ This case doth not only determine the law for the privi-
“ lege against the execution, but also that the party ought

Ferrers's case.

(*a*) Middle Ages, vol. 2, c. 8.

Release of
members.

Ferrers's case.

“ to be discharged without writ, when the serjeant-at-arms “ comes for him.” There was however, no slight aggravation in this case, in the violent and contemptuous manner in which the sheriffs and their officers treated the serjeant-at-arms bearing the ensign of his official authority, the mace ; and there was another fact which may, at least in Hatsell's opinion, serve to explain the measure here adopted, and the doctrines now for the first time laid down, as to the extent of the privileges of the House of Commons. Ferrers was an immediate servant of the King ; so that the allowance of the privilege in this case was as well in respect of the claim of the King for his servant, as of the claim of the House for its members. Add to this, he was only a surety, and was arrested on his way to attend the Parliament. An inferior Court would liberate a person arrested under similar circumstances in his progress to attend the Court in obedience to a lawful summons. When the vehement displeasure of the House had at length subsided, they acted equitably as usual, saving the plaintiff's execution against the principal debtor, (who would have been discharged if the taking of Ferrers were lawful), and discharging Ferrers himself by a majority of only fourteen, and after a long debate of nine or ten days.

Lawyers, it is to be expected, would scarcely admit such innovations without finding room for difficulty and scruples. They would naturally feel some hesitation in saying that the sheriffs ought to have discharged the prisoner on their own responsibility, on the mere order of the serjeant bearing his mace. They would consider that if that should not be deemed a good authority at law for the discharge, the sheriffs would have made themselves liable for the debt. They might retain, too, for a time, their former opinion, that privilege did not extend to arrest in execution on a judgment had before the time of privilege. Accordingly, we find that afterwards, in 6 Queen Eliz. (a) Dyer, when Chief Justice, said, “ That if a man is condemned in debt

(a) Moore's Reports, 57.

“ or trespass, and is elected a member of Parliament, and
 “ then is taken in execution, he cannot have the privilege
 “ of Parliament; and so it was held by the sages of the law
 “ in the case of Ferrers, in the time of Hen. 8, “ *Et coment*
 “ *que le privelege a ceo temps fuit a luy allow, ceo fuit minus*
 “ *just.*” Dyer (a) himself reports a case which occurred
 within two or three years after Ferrers’s case, in 36 and 37
 Hen. 8, *videlicet*:—

Trewynnard’s case, who (b) being a burgess of Parliament,
 and taken in execution, and in custody at the commence-
 ment of the session on a judgment entered up during a
 very long prorogation, was freed, not by the mace or
 serjeant-at-arms, but by a writ of *supersedeas* of privilege;
 which writ was a security to the sheriffs against an action
 for an escape, whether the privilege were allowable or not.
 Such an action *was* brought, but no judgment given. There
 is also a peculiarity in the writ in this (Trewynnard’s) case,
 that the claim of privilege is for the first time extended, in
 point of duration, beyond the time of members going to
 Parliament, residing there, or returning home—to persons
venientes seu venire intendentes.

Trewynnard’s
 case.

From Ferrers’s case to 1575, for above thirty years, the
 House of Commons, instead of adopting the mode of delivery
 by the mace, ordered writs of privilege to be issued in
 almost every instance. It appears from Hogan’s case, in
 1601, that it was still later before the House of Lords
 exerted this privilege, and Hogan was a servant of the
 Queen; as Ferrers, in whose case it was first adopted, has
 been seen to have been of the King. In Smalley’s case,
 however, (the next that occurs), the House proceeded with
 great deliberation, and adopted the course, after a long
 debate and consultation; and it was not till long after, that
 the practice became established.

Hogan’s case.

Smalley’s case.

Sir Thomas Shirley’s (c) case, in 1603, in which the
 warden of the Fleet, refusing to release the prisoner when
 demanded by the serjeant-at-arms, was committed to the

Shirley’s case.

(a) Dyer, 61.

784.

(b) Prynne’s Fourth Register,

(c) Parl. Hist. vol. 5, p. 113.

Tower, and there persisting in his obstinacy, to the *dungeon of little ease*, (a dismal hole in the Tower), seems at last to have rendered it apparent, that neither the law of Parliament, nor any statute, had satisfactorily pointed out a mode by which the member in custody in execution, should be delivered; or had taken care to secure the gaoler from an action, or to ensure to the creditor his right to a new writ of execution. To effect the two latter objects it was always thought necessary or prudent, to make a particular law; though this opinion is controverted by Elsynge (*a*), who considers the arrest as “merely void, and an act to deliver “him that is arrested, or to save the plaintiff’s execution, “*ex abundanti* and needless.”

At last a general law.

In order to avoid all difficulty for the future, it was thought expedient to pass the general law, 1 Jac. 1 (*b*), “for new executions to be issued against any which shall “hereafter be delivered out of execution by privilege of “Parliament, and for discharge of them out of whose custody such persons shall be delivered;” with this proviso— “Provided always, that this act, or anything therein contained, shall not extend to the diminishing of any punishment to be hereafter by censure in Parliament inflicted, “upon any person which shall hereafter make, or procure “to be made, any such arrest as aforesaid;” which is a direct and ample Parliamentary recognition of the right in the two Houses of Parliament, not only to liberate persons entitled to privilege, but to inflict punishment by censure in Parliament, in the particular case of arrests.

After the act of 1 Jac. 1, c. 13, some formal step and process at law seems to have been at first always thought necessary to give that act its full operation, no privileged person in custody in execution, having been for sometime, delivered by any other method, than by virtue of a writ of privilege, or by a writ of habeas corpus, issued in obedience to a warrant under the Speaker’s hand, made by order of the House (*c*). But in 1625, the Commons declared that

(*a*) Manner of holding Parliaments in England, 246.

(*b*) 1 Jac. 1, c. 13.

(*c*) 1 Hats. 165.

“the House hath power, when they see cause, to send the Serjeant immediately, to deliver a prisoner.”

Colonel Pitt's case, reported in *Strange* (a), determines by what means the Courts of Law, can discharge a privileged person from custody. The arrest of a member since the statute 10 Geo. 3, is held in that case, to be void *ab initio*, and it is thenceforth established, that he may be discharged immediately upon motion in the Court from which the process issued. But this determination is, of course, confined to the methods of releasing a member, which can be pursued in Westminster Hall. There was then no Parliament in existence. Pitt's case.

When Parliament is sitting, the House of Commons have not abandoned their claim to the power of releasing their members arrested under civil process, by their own officers and *proprio vigore*; neither, from the period last mentioned, to the present time, have they ever refrained from exercising it? In 1677, Sir Robert Holt was discharged, though he had been taken in execution “out of the privilege of Parliament.” In 1707, Asgill (b), a member in execution, was discharged; the Serjeant being sent with the mace to the Warden of the Fleet. In many other cases during the seventeenth century, peers and members arrested in execution, were released without writ of privilege or *habeas corpus*. And in cases of arrest on mesne process, the practice prevailed of releasing the prisoners by a warrant, or sending the black rod in the name of the House to demand them. It is now settled that members may be discharged immediately by warrant; and this does not obtain, only where the privilege existed anterior to the arrest; but is enforced where a person has been arrested on mesne process and is in custody,—but is afterwards elected a member. So it is now enforced where he has been in custody in execution before his election (c). C. Burton's case.

The parties effecting an arrest, were not lightly dealt with in former times. In 1621, Sir J. Whitelocke's man

(a) 2 *Strange*, 985.

(b) 15 *Com. J.* 471.

(c) *Mills' case*, 1807. *Christie*

Burton's case, 1819.

being arrested, the parties are called to the bar and heard on their knees. They acknowledge their fault and crave forgiveness of the House and of Sir J. Whitelocke; but it is ordered upon the question, "That they shall both ride upon one horse bare-backed, from Westminster to the Exchange, with papers on their breasts, with this inscription,—'For arresting a servant to a member of the Commons House of Parliament.'"

Now, his person protected; his property liable.

To return to the subject of the freedom of a member's person, (from which, the consideration of the means and process employed to deliver him when in custody, has led to a digression); the law is now, at all events, settled upon a rational basis. A peer or member of Parliament may be sued, but cannot be arrested or detained in custody. His person shall not be subjected to any imprisonment upon process in civil suits; but the pretended privilege of lands and goods being taken away, (if it ever existed); a peer's or member's property may be sequestered for nonperformance of an order or a decree of a Court of Equity,—or levied upon under a *distringas* issued by a Court of law (a).

s. 2.

s. 3.

By the 10 Geo. 3, "Any person may commence and prosecute any action in any Court of Record, or Court of Equity, or of Admiralty, (or in causes matrimonial and testamentary, in any Court having cognizance of such causes,) against any peer or member of the House of Commons, or any of their menial or other servants, or any other person entitled to privilege of Parliament; and no proceedings thereupon shall be delayed under colour of such privilege. But this shall not subject the person of any member of the House of Commons to be arrested or imprisoned, on any such suit or proceedings. And to remedy the dilatoriness by process of *distringas*, the Court out of which the writ proceeds, may order the issues levied from time to time, to be sold, and the money arising thereby, to be applied to pay such costs to the plaintiff, as the Court shall think just, and the surplus to be detained till the defendant shall have appeared, or

(a) 10 Geo. 3. c. 50.

“ other purpose of the writ be answered. And obedience s. 5.
“ may be enforced to any rule of the Court of King’s
“ Bench, Common Pleas, or Exchequer, against any person
“ entitled to privilege, by distress infinite, if the person
“ entitled to the benefit of such rule, shall choose to proceed
“ in that way.”

The privilege of freedom from arrests in civil suits, extends to protect members of either House from attachment for non-payment of money, or for non-performance of an award (*a*). So likewise against informations, and as well in the King’s suit as a subject’s.

But there is no such exemption in criminal cases and breaches of the peace. To proceedings on these, privilege of Parliament was never considered applicable. The case of writing and publishing seditious libels was, in 1763, resolved by both Houses not to be entitled to privilege upon reasons which extended equally to every indictable offence. The only privilege of Parliament in such cases, of crimes and misdemeanors, seems to be the right of receiving immediate information of the imprisonment or detention of any member, with the reason for which he is detained: a practice that is daily used upon the slightest military accusations, preparatory to a trial by court martial, and which is recognized by the several temporary statutes for suspending the Habeas Corpus Act; whereby it is provided that no member of either House shall be detained, till the matter of which he stands suspected, be first communicated to the House of which he is a member, and the consent of the said House obtained for his commitment or detaining. But yet the usage has uniformly been (*b*), ever since the Revolution, that the communication has been subsequent to the arrest.

No exemption of members in criminal cases and breaches of the peace.

Neither, in matters of this nature, are peers or members protected against the process of the Courts, to punish disobedience to their orders. To this effect is the following

Or, against process of the Courts to enforce their orders.

(*a*) *Walker v. Earl Grosvenor*, 7 T. R. 171, 448.
Catimer v. Sir E. Knatchbull, (*b*) 1 Black. Com. 167.

entry (a): "It is ordered and declared, that no peer or
 "lord of Parliament hath privilege against being com-
 "pelled, by process of the Courts of Westminster Hall,
 "to pay obedience to a writ of *habeas corpus* directed to
 "him." Accordingly, an attachment may be granted, if
 the peer refuses obedience to the writ; for being a contempt,
 a peer has no privilege (b).

Or, on com-
 mitments for
 contempts of
 Courts.

In 1831, Mr. Long Wellesley was committed by Lord Brougham for a contempt of the High Court of Chancery, and a Committee of Privileges in the House of Commons, held that Mr. Wellesley's claim to be discharged from imprisonment, by reason of privilege of Parliament, ought not to be admitted.

In 1837, Mr. Lechmere Charlton was committed by Lord Cottenham for contempt in writing an improper letter to a Master in Chancery. The House of Commons inquired fully into the nature and particulars of the contempt, and then declined to interfere for the member's liberation by virtue of privilege.

Or, member
 may be made a
 bankrupt.

As, since the 10 Geo. 3, c. 50, a person having privilege of Parliament may be sued without protection (c), so may he, be made a bankrupt in the following manner. If any person within the description of the Acts relating to bankrupts, having protection of Parliament, does not within one calendar month after personal service of a summons, (an affidavit of debt having been filed by the creditor), pay or secure, or compound for such debt, to the creditor's satisfaction, or enter into a bond in such sum, and with two such sufficient sureties, as any of the Judges of the Court out of which the summons issued shall approve, or does not within one calendar month next after personal service of such summons, cause an appearance to be entered to such action or actions in the proper Court, every such trader is to be adjudged (d) a bankrupt from the service of such summons. And by section 11, if any such trader disobeys

(a) L. J. 7th Feb. 1757.

(b) R. v. Earl Ferrers, 1 Burr.

(c) 4 Geo. 3, c. 33, s. 4. 45

Geo. 3, c. 24, s. 1. 6 Geo. 4, c. 16.

(d) 6 Geo. 4, c. 16, s. 11.

any decree pronounced in any cause depending in any Court of Equity, or any order made in bankruptcy or lunacy against any such trader for the payment of money, the same having been duly served upon him, and a peremptory day fixed for such payment, such trader is to be deemed a bankrupt, from the service of such order for peremptory payment.

If a bankrupt be a member of Parliament, the commissioners cannot commit him for not attending, or not answering; he can only be imprisoned in such cases as are made felony by the acts relating to bankrupts. But a member of Parliament, who is become a bankrupt, vacates his seat (*a*), unless the commission is superseded within twelve months from its being issued, or the creditors are paid their debts in full within the same period; and is disqualified for sitting in the interim.

Cannot be committed by commissioners for not answering.

It is a sufficient objection (*b*) to bail, that he hath privilege of Parliament, whereby the plaintiff may be delayed in obtaining payment from him.

May be objected to as bail.

The extent, then, of the privilege last under consideration, may now be regarded as sufficiently ascertained and fixed. It may be generally laid down, that no member of either House can be arrested and taken into custody, or detained in custody, unless for some indictable offence. In a civil suit, a peer or member cannot be arrested, or imprisoned, without a breach of the privileges of Parliament, which either House, upon the report of a committee, will upon good reason punish by commitment. But how, it is material to learn, is a party to be delivered out of custody when arrested in a civil suit, supposing the Parliament not to be sitting, or to be dissolved? in what manner can Courts of Justice take cognizance of privilege of Parliament? For it has been seen (*c*), that when a letter was written by the Speaker to the Judges, to stay proceedings against a privileged person,

Extent of privilege of freedom from arrest.

Discharge, how obtained from court of law.

(*a*) 52 Geo. 3, c. 144.

(*b*) 4 Taunt. 249.

(*c*) *Hodges v. Moore*, *ante*, p. 89, note.

they rejected it as contrary to their oath of office. These objects were formerly effected in two ways: 1st, the discharge of such privileged (*a*) person might be procured by writ of privilege, in a nature of a *supersedeas*: 2ndly, such arrest being irregular *ab initio* (*b*), the party can be discharged upon motion (*c*); he may move the Court from which the process issued, that he may be discharged immediately.

Writs of privilege are now discontinued. When the House is sitting, members are discharged directly by warrant. In 1819, Mr. Christie Burton had been elected member for Beverley, but being in custody in execution and on mesne process, was unable to attend his service in Parliament. The House determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the Warden of the Fleet. An action was brought against the Warden by the assignees of the creditors of Mr. Burton, on his escape. The assignees were declared guilty of a breach of privilege, and ordered to attend the House. They acknowledged their offence and the matter was dropped.

Duration of
this privilege.

The extent of this privilege of Parliament, and the mode of procuring the liberation of parties improperly arrested—points which were found so embarrassing in the greater part of the cases referred to—being thus established, the next question affecting this privilege is its duration. In the case of peers, the privilege is perpetual; but as to members,—where the privilege is that of Parliament,—its duration, the reader will be surprised to learn, is no where precisely (*d*) determined. It certainly is the received opinion, that it extends to forty days after every prorogation, and forty days before the next appointed meeting; and, after a dissolution, to a reasonable time to return home; as long, Prynne, thinks, as the member would receive wages *exinde redeundo*, in proportion to the distance between his home and the place where the Parliament was held; for the Act

(*a*) Latch. 150. Dyer 60, *a*.
(*b*) Fort. 342.

(*c*) Pitt's case, 2 Stra. 985.
(*d*) Strange, 985.

35 Hen. 8, c. 11, gives wages for as many days as may be reasonably taken up in coming and returning. In the Irish Acts, (which were generally only transcripts of the laws enacted here), the privilege is expressly recited to have continuance for forty days before and after the Parliament finished. But, in 2 and 3 Ph. & Mary, in Pledall's (a) case, who was bound to appear in the Star Chamber in twelve days after the end of Parliament, it was held, says Prynne, that the Commons have not twelve, much less twenty or forty days after the Parliament ended. Now, in truth, no such thing was ever judicially "held:" And it was never so declared by the Parliament. The Judges and Law Officers, gave an extra-judicial opinion (*consilium not judicium*;) and their advice went only to say that the recognizance to appear before the Council, twelve days after the end of Parliament was no breach of privilege.

In Martin's case (b), the House being asked whether they would limit a time certain, or a reasonable time for privilege?—Answer: A *convenient* time. And held that Mr. Martin, who had been arrested within twenty days, had been arrested within this reasonable time.

In the Duchess of Somerset, appellant, and the Earl of Manchester, defendant; a cause before the delegates, 16 Car. 2, the Earl demanded forty days' privilege before the session of Parliament, his object being to put off their sentence; the delegates, consisting of the two lord chief justices, five other judges, and other commissioners, after debate among themselves, were of opinion, that the Earl had not privilege for forty days before the session of Parliament (c).

"In England," says Hatsell, "I recollect nothing established by law till the 12th and 13th Wm. 3, c. 3, and then it is only enacted, 'that no action or suit shall be prosecuted against any person entitled to privilege,

(a) Gabriel Pledall's case, 4th part. Prynne's Reg. 1213. 1 Comm. Journ. 46.

(b) 1586. 1 Hats. 99.

(c) 4 Prynne's Reg. 1214.

“ unless the adjournment shall be for above fourteen days.”

In 1621, when an adjournment of five months was intended (a) instead of a prorogation, in order that certain important measures might not be interrupted, it appears to have been universally agreed in the Commons, that their privileges continue during an adjournment (b), the same as during the sitting of the House. The Lords (c) consulted the judges upon the question, who answered, that they could not satisfy their Lordships *of any precedents of the continuance of their privileges during all the time of the long cessation*. The Lords, however (d), resolve, that they do know that their privileges do continue, notwithstanding the adjournment; but limit their claim *as to freedom from arrests*, to twenty days before and after every session.

Hakewill, it has been seen (e), lays it down as the doctrine of his times, that Parliament doth not give privilege *tempore vacationis, sed sedente curia* only. But the received opinion is certainly different, and the right of members to send their letters free from postage, before the privilege of franking was abolished, was ascertained by 4 Geo. 3, c. 24, to continue during the sitting of Parliament, and within forty days before, and forty days after any summons or prorogation of the same. And though no precise time is limited after a dissolution, the Judges will allow a convenient time (f); “ a convenient and reasonable time for returning home.”

Privilege of Parliament cannot be waived, “ because it is said, the privilege is not so much the person’s (g) as the House’s.” The Speaker charges a person brought to the bar for an offence, with breach of the privilege “ of the House.”

It lies on the plaintiff in an action, to discover whether the defendant be entitled to the privilege of peerage, and

(a) 1 Hats. 161.

(b) Hakewill, *contra*.

(c) 2nd June, 1621.

(d) 14th Dec. 1621.

(e) Thorpe’s case, *ante*.

(f) Col. Pitt’s case, 2 Strange, 985.

(g) D’Ew. Journ. 436. Scobell, 95.

although the defendant may have often waived the privilege, that will not make it regular to sue him by common process (a). So every man must take notice of all the members of the House of Commons returned of record, at his peril; but it was otherwise of his servants (b), when they were protected from arrest.

Some of the other privileges of members, (remotely connected with this subject of personal freedom, and unimpeded attendance upon Parliamentary duties), seem rather to have fallen into neglect and desuetude from the good taste and right feeling of the age, than to have been at any particular period of legal history formally abolished. Such is, for example, the claim of exemption from attendance before any of the ordinary Courts of Justice in the character of witnesses,—a claim which is distinguishable from the case of jurors. In former times such immunity was loudly insisted on, and the party serving a *subpœna*, or other process of the Courts, summarily visited. 3 Dec. 19 Jac. 1. Upon occasion of a *subpœna* served on Mr. Brereton, it was agreed by the whole House to be a breach of privilege, and the person who served it, committed: upon this reason, “that no man should have anything to withdraw him from his service in this House.” In “1607, on the “5th, 7th, and 8th of May, *subpœnas* are served, and the “parties are committed to the serjeant, and are to pay “fees.”

Obsolete claims of privilege.

Not to be witnesses.

It seems unquestionable, that members of the House of Commons are not liable to be called upon to serve on juries during the sitting of Parliament. Also, that an adjournment of the House is to be looked upon as a sitting, so far as the question of privilege is concerned. The last Jury Act, 6 Geo. 4, c. 50, which expressly exempts peers, has not touched the question of privilege as respects members of the House of Commons. But it contained a proviso;—

Aliter jurors.

(a) *Fortam v. Lord Rokeby*, 4 Taunt. 688. (b) 4 Inst. 23.

“ that all persons exempt from serving upon juries in any
 “ of the Courts aforesaid, by virtue of any prescription,
 “ charter, grant, or writ, shall continue to have and enjoy
 “ such exemption in as ample a manner as before the pass-
 “ ing of this Act, and shall not be inserted in the lists
 “ hereinafter mentioned.”

8th May, 1607. Two members (a) inform the House,
 “ that they were returned by the sheriff, jurors in the
 “ Court of King’s Bench. It was ordered that, by the
 “ privilege of the House, they should be spared from their
 “ attendance, and Mr. Serjeant is commanded to go with
 “ the mace and deliver the pleasure of the House to the
 “ Secondary of the King’s Bench, the Court then sitting” (b).

Protection
 from criminal
 wrongs.

Hitherto have been considered the exemption of members
 from legal arrests and seizures by civil process from the
 Courts of Law. It remains to notice very shortly, the
 measures resorted to at different times to protect them from
 illegal violence. In the laws (c) of Ethelbert, the first King
 of Kent, at the end of the sixth century, it was provided,
 “ if the King call his people to him (*i. e.* the Witen-a-ge-
 “ mot), and any does an injury to one of them, let him pay
 “ a fine.” So Sir Harry Spelman, in his Glossary, under
 title *gemotum*, which he explains to be *conventus publicus*,
 cites a law of King Canute: “ *Omnis homo pacem habeat,*
 “ *eundo ad gemotum et redeundo a gemoto ;*” and a breach of
 the “ King’s peace,” thus announced, would of course be
 heavily punished (d).

5 Hen. 4, (e) Chedder’s case arose out of a violent
 assault upon a member. The Commons pray a rigorous
 punishment. An act passed to compel the appearance of
 the offender.

10 Hen. 6 (f). The Commons make a similar request,
 but in terms of greater moderation. Answer: *Le Roy*
s’avisera.

(a) Same, 15th May, 1658.

(b) 1 Hatsell, 169.

(c) Wilkin’s Leges Anglo Sax.

2.

(d) Ch. 207.

(e) Rot. Parl. No. 78. Vol. 3,

p. 542.

(f) No. 39. Vol. 4, p. 404.

11 Hen. 6 (a). Upon a like petition, an act passed which gives double damages to the party grieved, with fine and ransom at the King's will.

23 Hen. 6. A like petition and answer, as follows:—
“*Soient l'estatutz faitz devaunt cez heures en cest partie,*
“*tenuz, gardez et observez en toutz poyntes*” (b).

Though a disposition does not seem to have been at any time wanting in the other branches of the legislature, to punish with a commensurate severity, by the infliction of the highest penalties of the law, offences of this nature, which united a violation of the public peace with a high contempt of the privilege of Parliament, those laws were probably found ineffectual; for it appears that soon after, the House of Commons very properly, took the inquiry into these offences, and the punishment of the offenders, into their own hands.

In 1554, Monynton's, and, 1575, Williams's case: both were imprisoned by the House for striking members.—1601, a similar case.

On 21st Nov. 1621, one (c) was taken at the rising of the House, with a pistol charged with three bullets, who had abused a member and called him “knave,” and said he would kill one of the House before he had done. He is, by Sir Edward Coke's advice, committed close prisoner to the Gate-house, and a committee is appointed to examine him.

Since the Revolution, it has not been unusual for the House of Commons, in cases of libel, and some other offences, which may be thought to deserve a punishment different from what the House has power to inflict, to order the Attorney General to prosecute the offenders; or to address the King, praying that he will give directions for that purpose.

Prosecutions
by Attorney
General some-
times directed.

The Lords, upon a similar occasion, resolved that it had not been usual for them to present any address to his Majesty in such case, but to direct a prosecution themselves (d).

(a) Rot. Parl. vol. 4, p. 453.

(c) 1 Hatsell, 198.

(b) *i. e.* 5 Hen. 4 and 6, and
11 Hen. 6, c. 11.

(d) Report, Committee Lords,
18 May, 1716.

Franking
abolished.

The “mendicant”* privilege of letters coming free of postage to and from members of Parliament, is now abolished.

Collective
privileges.

The privileges enjoyed by individual members, and which are essential to their regular attendance on Parliament and to the independent discharge of their duties in the House, were, on that account, brought prominently forward in the Speaker’s prayer; but it will now be proper to treat generally of the collective privileges of the two Houses, or rather of the High Court of Parliament. These can be best, and indeed only, ascertained, by examining what have been, on various occasions, declared breaches of the privileges of either House.

Breaches of
privilege:

Insults.

Obstructions.

Such are among others, indignities to the character, or obstructions to the proceedings of either House; assaulting, obstructing, insulting or menacing any member in his coming to or going from the House; so, the endeavour to compel members by force, to declare themselves in favour of or against, any proposition.

Libels.

Challenging a member for his conduct in the House or in a committee. Libellous reflections against the honour and dignity of the House in general, or any member thereof. These, and similar offences, have been voted breaches of privilege and punished accordingly, whether committed by members or strangers (a).

By members.

And first, in the case of members: In 1675, Lord Shaftesbury, who had been committed by the House of Lords for high contempts against the House, was brought before the Court of Queen’s Bench by *habeas corpus*, and the commitment for a contempt generally, being returned, the prisoner was remanded. In 1586, Arthur Hall, a member of the House of Commons, was, (as before slightly alluded to), imprisoned, expelled, and fined; the latter a

(a) See cases cited in the Appendix to the Second Report on Sir F. Burdett, in 1810; and the

head of “Complaints” in the several Journal Indexes.

* So called by Sir Heneage Finch when the exemption was first granted.—*Parl. Hist.* vol. 23, p. 56.

power not acknowledged, and which the House has not since been in the habit of exercising (*a*). Hall's offence was having published a libel, "containing matter of infamy, of sundry particular members and of the whole state of the House, and also of the power and authority of the House." In 1810, Sir Francis Burdett, was sent to the Tower, for publishing "a libellous and scandalous paper reflecting upon the just privileges of the House." In Hobhouse's case, in the year 1819, the House of Commons having voted the defendant guilty of a breach of their privileges, for publishing a libel upon the House, and having ordered him to be committed to Newgate during their pleasure, and the Speaker's warrant being returned into the Court of King's Bench upon a *habeas corpus* sued out by the defendant, the Court refused to discharge him out of custody.

In the case of defendants, not members of either House, the following are selected instances. In 1779, Flower was fined and committed for a libel on the bishop of Llandaff. In 1798, Messrs. Lambert and Perry were fined £50 each, and committed to Newgate for three months, for a newspaper paragraph, highly reflecting on the honour of the House of Lords (*b*). On the 22nd June, 1781, complaint was made that Sir J. Wrottesley had received a challenge for his conduct as a member of an election committee; and Swift, the person complained of, was committed to the custody of the Serjeant-at-arms (*c*).

By offenders
not members.

Besides insults and obstructions to the House and its proceedings, disobedience to the rules and orders of either House is treated as a breach of privilege. The House will punish those who refuse compliance with their orders, or obstruct their execution. And that, whether the orders be general; as that (*d*) "no printer or publisher of any printed newspaper do presume to insert in any newspaper, any debates or other proceedings of the House;" or particular;

Disobedience
to orders.

(*a*) p. 137, ante.

(*b*) Lords J. 506.

(*c*) Com. J. 535—537.

(*d*) 20 Com. J. 99.

such as orders relating to “ attendance before committees ;”
“ the production of papers and records, &c.”

Corruption or
hindrance of
witnesses.

Another offence against the collective privileges of the House, is the corruption or hindrance of witnesses summoned to attend or appear before it (*a*).

Mode of
inquiry.

Anciently no person was to be taken into the custody of the Serjeant-at-arms, upon any complaint of a breach of privilege, until the matter of the complaint had been examined by the committee of privileges, and reported to the House (*b*). Now, although the Committee of Privileges is still formally appointed at the commencement of each session, no members are nominated. If, therefore, any special circumstances arise out of a complaint of breach of privilege, it is usual to appoint a select committee to inquire into them. In ordinary cases the party complained of is “ ordered to attend the House,” and is examined at the bar.

Adjudged to be
a contempt.

Both Houses proceed in the same manner to declare the party guilty of a breach of privilege, amounting to a contempt of the High Court of Parliament, for which they deal with him by censure or commitment ; to which the Lords can add a fine.

Punishment.

For there is a difference in the punishments inflicted by the Lords and Commons. The House of Lords claims to be a Court of Record, because it is such unquestionably, when it acts in its judicial capacity. It therefore not only imprisons, but also imposes fines ; and formerly in cases of libel, (when disgracefully severe punishments used to be awarded) ; often added the pillory.

In Lords.

The Lords have also power to commit offenders to prison for a specified time, beyond the duration of the session ; and to order security for good behaviour.

By House of
Commons.

The House of Commons, which is not a Court of Record, has tacitly abandoned the imposition of fines, but imposes the condition of the payment of fees before an offender is

(*a*) See Synthetical Table of the proceedings of the House of Commons, framed by Lord Colch., and

prefixed to the Index of the Commons' Journal.

(*b*) Resolution, 1701.

discharged, which is equally part of his punishment, and virtually amounts to a fine. No period of imprisonment is named by the Commons, and the confinement terminates with the session.

In Floyd's case, who had spoken offensive words of the King's daughter and the Elector Palatine, *temp. Jac. I.*, the House of Commons set up an unfounded claim to criminal jurisdiction; for it was impossible to make such mere indecencies of language, amount to a breach of privilege. Acting as a Court of Judicature, they pronounced sentence that Floyd, a gentleman by birth and station and a country magistrate, should pay a fine of £1000, stand twice in the pillory, and ride backward on a horse with the horse's tail in his hand (*a*). They, however, afterwards discovered their error, and changed the course of proceeding (*b*) into an impeachment of Floyd before the Lords; with an ambiguous and unmeaning protestation as to the rights and privileges of the Commons remaining in the same plight as before. The Lords equally disgraced themselves in this case (*c*).

Floyd's case.

Instead of "kneeling at the bar," to receive his sentence which was formerly required, but not always complied with; the judgment of the House is now received by a prisoner standing at the bar (*d*).

Having treated of the punishments inflicted by either House of Parliament, for obstructions or contempts, or disobedience to orders, it remains to speak of the protection afforded to their own officers, to parties, witnesses and others.

Protection to officers of either House.

The officers of either House, are supported by the House in the execution of their orders. As the officers of Courts of Justice, charged with the execution of the process of the Courts, may break open doors, if necessary, in order to execute it; so, Lord Ellenborough said, it cannot be contended that the Houses of the Legislature, are less strongly

Officers may break open doors.

(*a*) 1 Com. J. 609. 5 Parl. Hist.
(*b*) *Ib.* 619.

(*c*) 3 Lords J. 134.
(*d*) 33 Com. J. 594.

armed in point of protection and remedy against contempts towards them, than the Courts of Justice are (a).

But by a recent case, the Serjeant-at-arms, though he has a right to enter the house of the person against whom a warrant has been issued by the Speaker and to search for the party, has no right to remain in the house, if the defendant be from home, in order to await his return; for that is an excess of jurisdiction (b).

Another action was subsequently brought by the same plaintiff against the same defendant, and a messenger of his, for another trespass in executing a warrant of the Speaker. The warrant was so drawn as to make its legality doubtful, and three of the judges felt themselves compelled to pronounce it illegal. All the judges agreed that they were bound to examine into its sufficiency: one held that it was sufficient. The House of Commons in this case has directed a discussion of this point in a Court of Error, but the point involved is of secondary importance.

To parties and witnesses.

Parties, while their causes or bills are depending in Parliament; witnesses summoned to attend before either House of Parliament, or their committees; and others personally engaged in prosecuting any business in Parliament, were always allowed privilege to protect them from arrest, "in coming, staying, and returning." Recently cases have arisen, in which somewhat extended privileges appear to have been claimed.

A committee of the House of Commons, engaged in the investigation of the Poor Law, had received statements injurious to the character of a surgeon, which were printed by order of the House, and circulated at the regulation price. The person who suffered from the representations declared them utterly false, and for the vindication of his character, brought an action of slander. The defendant preferred a petition to the House of Commons, complaining that the action had been brought. The House called before them the plaintiff and his attorney, and directed the

(a) 14 East, 1.

11 Adol and El. 209.

(b) Carrington and M. 382.

Speaker to inform them that they had committed a breach of the privileges of the House, and were guilty of a contempt. They protested their ignorance of the offence, expressed their contrition, and undertook to drop the action (a).

Shortly after another petitioner respectfully apprised the House, that his name had been employed without his authority, in some proceedings before the House, inculcating third parties, and exposing him to consequences which, in his opinion, gave him a right of action against the person falsely representing him. He, therefore, most respectfully requested the House to sanction his proceeding to bring an action. The permission was refused with a distinct intimation, that if he should venture to proceed with his action, he would incur the penalties of a contempt.

In the same session of Parliament, at no long interval, the defendant in an action for defamation, informed the House of Lords by petition, that the words for which he was sued, were a part of his evidence given before a committee appointed by that House to inquire into the law of gaming. The House of Lords appointed a committee to search for precedents, and the leading case found, was the famous Umbrella case, where the Lords peremptorily interfered with a summons served on one of their messengers, from the Court of Requests. The Lords in the principal case, pursued a still harsher course than the Commons had adopted in the surgeon's case. The Lords committed the plaintiff and his attorney, and afterwards discharged them with a reprimand for their contempt and breach of privilege, only upon their undertaking that the action should be immediately discontinued (b).

These cases seem to carry the doctrine of protection to witnesses, to an extraordinary, not to say, an undue length. The contempt would seem to be greater in making the Parliament House, or its committee room, a Court of slander, impertinence and false charges, than in seeking

(a) Parrott's case, 1845. Hansard, vol. 81, third series, p. 1436.

(b) Baker's case, 1845. Hansard, vol. 82.

the exposure of the falsehood and legal redress for the injury inflicted, by fit means in a Court of Justice.

When, indeed, evidence is given *bonâ fide*,—where inculpatory matter is extracted from a witness, and not volunteered by him, Parliament may be expected to protect him from pecuniary loss occasioned by disclosures made in the course of his examination before the House or its committees. As the great inquest of the nation (though not a Court of Record); as invested with extraordinary, inquisitorial powers, and entrusted with the right of impeachment, the House of Commons must possess all necessary means of collecting information and sifting evidence. To found their judgment also, on all legislative measures, members may find it necessary to institute the most free and searching inquiries into facts of every description. And not only must the House itself be unrestrained in its inquiries after truth, but communications *bonâ fide* made to it must be protected and privileged, to the same extent as in the King's Courts.

But where, *e contra*, either House of Parliament is used as a convenient and safe receptacle of oral slander,—where aspersions on character, or general defamatory matter, are unnecessarily introduced,—where reflections upon others who are not present to defend themselves, are wantonly, and appear to be maliciously, made; and above all, where the statements are *untrue*; * the House might surely permit the injured party to prove the falsehood of the charges before a jury of his countrymen, as he might have done if the evidence had been given in a Court of Justice. Lord Brougham, in his caustic and eloquent speech, and most acutely, in his powerful protest in Baker's case, has demonstrated that either House would find it a difficult matter to protect its witnesses from a prosecution for perjury.

* The protection in such a case, is said to be not only *eundo, redeundo et morando*, but also, "*calumniando, mentiando, pejerando*."—(*Quarterly Review*). Privilege was formerly found in the best company; associated with "rights, liberties and franchises;" now it is always coupled with authority, force, terror, commitment, custody, hatred to the law and hostility to the people. *Quantum mutatus ab illo*: The sooner it returns to its, old *set*, the better!

These are the general heads of privilege of Parliament, comprehending, for the most part, such rights and immunities as belong to it, when considered as one aggregate body. The Lords in Parliament have some privileges peculiar to themselves, exclusive of such as belong to them in their judicial capacity. Of these the principal are,—1st, the right to be attended by the Judges, the Crown Officers, the King's Serjeants, and the Masters in Chancery, for their advice in points of law, and for the greater dignity of their proceedings; though in practice the opinion of the Judges alone, is now called for on points of law, upon which the Lords desire to be informed. 2ndly, the privilege that every peer, by license obtained from the King, may make another lord of Parliament his proxy to vote for him in his absence; a privilege which a member of the other House cannot have, as he is himself but a proxy for others. Proxies.

Lords who were summoned to the Great Council made their proxies, it is said, if they came not thither, as well as to the Parliament.

The proxies are entered in Latin, *ex licensia regis*, and such license being requisite, a doubt was started in 1788, at the time of the illness of King George 3, when the King was incapacitated from granting leave, whether the proxies were valid?

“The Lords that made their proxies, had for the most part a formal license signed by the King;” but (a) Elsynge says, “the King's verbal license is sufficient. Indeed, it is enough that letters of proxy mention the King's license, which none will presume on unless he have it.” The Peer holding the proxy, is called in Latin *procurator*; and anciently a Commoner was allowed to act as the proxy of a Peer in the House of Lords, of which Elsynge has given several instances. Sir Thomas Haxey seems to furnish another example of a proxy made to a stranger, who was not a member of the House, and indeed Haxey appears to have belonged to the other House; but (b) now all proxies

(a) Manner of holding Parliaments in England, 127.

(b) 16 Feb. 1626.

Proxies.

from a spiritual lord are made to a spiritual lord, and from a temporal lord to a temporal lord; and it is a part of the same order of the House (*a*), that no lord shall be capable of receiving more than two proxies, nor, it is said, shall more be numbered in any cause voted. It became necessary to make this order in consequence of the proceedings of Villiers, Duke of Buckingham, who had no less than fourteen proxies; and a similar order was made in Ireland during Lord Strafford's lieutenancy, to correct a like abuse (*b*).

It is said (*c*) that a proxy cannot be made to a lord that is absent himself.

A peer, by returning to, and sitting in the House in person, revokes his proxy, and, it is resolved that he cannot make a new proxy without a fresh leave.

Two may be named for proxies, *et conjunctim et divisim* (*d*). It seems the more general and better opinion, that unless they concur, the vote goes for nothing; but Lord Manchester, lord president of the Council, in a case where the proxies differed, in 1626, is said to have decided in favour of him who was first named in the delegation, and present (*e*).

Proxies cannot be used in a committee of the whole House, and a proxy cannot sign a protest. No proxy is allowed upon a question of guilty or not guilty, or where the peers sit to exercise judgment, although the proceedings be by way of bill.

The proxy of a lord must not be entered the same day on which he has been present in the House, and no proxy entered after three o'clock shall be used the same day.

Personal attendance.

"It is to be observed," says Lord Coke, "that where there is the best attendance of lords, there is the best success in Parliament. Anciently, as early, indeed, as Edward 2nd's time, the attendance of peers on Parliament was very strictly enforced, and all who were absent, without the

(*a*) 16 Feb. 1626.

Hen. 8.

(*b*) 1 Rushworth, 269.(*d*) 4 Inst. 12, 13.(*c*) Elsyng cites an. 33 and 34(*e*) Elsyng, 132.

“ King’s leave, were fined. But this King gave such as he
 “ favoured, leave to attend by proxy, who was at first a
 “ stranger, and afterwards another peer. Still, lords that
 “ neither came to Parliament according to their summons,
 “ nor made their proxies, for their disobedience were amerced;
 “ a Duke, an. 31 Hen. 6, was taxed at £100, an Earl at
 “ 100 marks, and a Baron at £40. At a Parliament,
 “ 7 Hen. 5, of the Lords spiritual and temporal, there
 “ appeared but thirty, and there was but one act passed,
 “ of no great weight. In 50 Ed. 3, all the lords appeared
 “ in person, and not one by proxy; and so many excellent
 “ things were done, that it was called *Bonum Parliamentum* ;”
i. e. several of the Judges were hanged for their delin-
 quencies.

3rdly. Another privilege is, that every peer has a right,
 by leave of the House, when a vote passes contrary to his
 sentiments, to enter his dissent on the Journals of the
 House, with the reasons for such dissent; which is usually
 styled his *protest* (a). Lord Clarendon says, the first Protests.
 instances of protests with reasons were in 1641, before
 which time, names only were set down as dissentient to a
 vote. “ The original of this was, in jealous times, when
 “ men desired, for avoiding the ill consequences of any act
 “ there, that their dissent might appear; and these consisted
 “ of short general entries: but in more troubled times, from
 “ an act for the particular indemnity of the person that
 “ made it, it grew sometimes to be a reproaching and arraign-
 “ ing the sense of the House, by any factious member that
 “ disagreed” (b).

The privilege, however, has been retained and regulated Protests when
to be entered.
 by the Lords. On the 27th Feb. 1721, it was ordered
 “ that such lords as shall make protestations, or enter their
 “ dissents to any votes of this House, as they have a right
 “ to do, without asking leave of the House, either with or
 “ without their reasons, shall cause their protestation to be

(a) 1 Bl. Com 168.

(b) Clarendon’s History of the
 Rebellion, vol 2, book 4, p. 407.

“ entered in the clerk’s book, the next sitting day before
 “ the hour of two o’clock, and shall sign the same before
 “ the rising of the House the next day.”

When a protest has been drawn up, any peer may subscribe it without remark, or he may signify the reasons which have induced him to attach his signature (*a*).

Privilege of exemption from punishment in certain cases of felony.

An extraordinary privilege was formerly secured to peers, (and held in the Duchess of Kingston’s case to extend to peeresses also), by statute 1 Ed. 6, c. 12, s. 13, by which it was enacted, “ that in all and every case and cases, where
 “ any of the King’s Majesty’s subjects shall and may, upon
 “ his prayer, have the privilege of clergy as a clerk convict
 “ that may make purgation, in all those cases and every of
 “ them, and also in all and every case and cases of felony,
 “ wherein the benefit of clergy is restrained or taken
 “ away by this act, (wilful murder and poisoning, of malice
 “ prepense, only excepted), the lord or lords of the Parlia-
 “ ment, and peer or peers of the realm, having place and
 “ voice in Parliament, shall by virtue of this present, of
 “ common grace, upon his request and claiming the benefit
 “ of this act, *though he cannot read*, without any burning in
 “ the hand, loss of inheritance, or corruption of blood, be
 “ adjudged, deemed and taken for the first time only, to all
 “ intents, constructions and purposes, as a clerk convict and
 “ shall be in case of a clerk convict, which may make pur-
 “ gation.”

Benefit of clergy, as is well known, originally consisted in the privilege allowed to a clerk in orders, when prosecuted in a temporal Court, of being discharged from thence and handed over to the Court Christian, in order to make canonical purgation; that is, to clear himself on his own oath and that of other persons, his compurgators: a privilege founded, as it is said, upon the text of Scripture; “ Touch not mine anointed, and do my prophets no harm.” In England this was extended by degrees to all who could read, and so were capable of becoming clerks; and by this

(*a*) Lords S. O. No. 114.

statute of Ed. 6, to lords and peers of Parliament, “*though they could not read;*” but with this difference, that the immunity was given to clerks in orders as often as they offended, peers could claim it only for the first offence. Benefit of clergy was abolished by 7 and 8 Geo. 4, c. 28, s. 6, but it was not clear whether this privilege of peerage were identical with it; whether it were *idem* or only *simile*. Therefore the act 4 and 5 Vict. c. 22, passed “to remove doubts as to the liability of lords and peers of Parliament to punishment in certain cases of felony:” and reciting, that doubts had been entertained whether, notwithstanding the provisions in the 7 and 8 Geo. 4, the act of 1 Ed. 6, might not for some purposes still remain in force, the statute of Victoria enacts that “such recited act shall be repealed, and the lords and peers of the realm, having place and voice in Parliament, shall be liable on conviction of felony to the same punishment as other subjects.”

Whether a peer, who is not a lord of Parliament, may be ordered by the House of Commons to attend as a witness before that House, or any of its committees, in the same form as a commoner, is a matter upon which the two Houses are not agreed. On the 5th June, 1806, the House of Commons ordered the attendance of Lord Teignmouth of the peerage of Ireland, and he attended accordingly. The House of Lords took exception to the mode of summons in this case. The Commons replied that Lord Teignmouth “is not a lord of Parliament, nor hath the right and privilege of sitting in the House of Lords, nor is entitled to any of the privileges thereupon depending.” The House of Lords, maintaining the privilege of peerage apart from the privilege of Parliament, resolved (a), “That it is the undoubted privilege of all the peers of the United Kingdoms of Great Britain and Ireland, except such as may have waived their privilege of peerage by becoming members of the Commons House of Parliament, to decline, if they so think fit, to attend the House of Commons for the purpose of giving information upon

Privilege of peerage apart from privilege of Parliament.

(a) Lord's J. 812

“inquiries instituted by that House, and that the said House has no right to enforce such attendance, &c.” But this resolution of the Lords was not communicated to the Commons (*a*).

Peers hereditary counsellors of the Crown.

The peers of the realm are by birth hereditary counsellors of the Crown. Instances have been shewn in the first chapter, of frequent conventions of the peers to advise the King, and these have only fallen into disuse by reason of the more regular meetings of Parliament. And it is on this account, according to some of our law writers, that the law gives to peers certain high privileges; such as freedom from arrests, &c., even when no Parliament is sitting (*b*); because it intends that they are always assisting the King with their counsel for the commonwealth, or keeping the realm in safety by their valour (*c*).

May demand audience of the King.

Besides the Great Council of peers, which our ancient Kings were accustomed to convoke in cases of emergency, it is usually looked upon to be the right of each particular peer of the realm to demand an audience of the King, and to lay before him, with decency and respect, such matters as he shall judge of importance to the public weal.

Most of the other privileges of peers, belong to them in their judicial capacity, and not as members of Parliament. Thus, a peer sitting in judgment gives not his verdict upon oath, like an ordinary jurymen, but upon his honour. Others are incidents attending their rank; as that, in capital cases, a nobleman shall be tried by his peers; the right of nominating a certain number of chaplains, &c.

Privileges out of Parliament.

Others are peculiar privileges annexed to the peerage in the course of judicial proceedings; as, that a peer shall receive a letter missive from the Court of Chancery, when a bill is filed against him, and shall answer to such bills upon his honour, and not upon his oath.* And this

(*a*) See 2 Hats. App. 9.

Wm. 3, c. 3. 2 and 3 Anne, c. 18.

(*b*) See ante, p. 140. 12 and 13

(*c*) 1 Bl. Comm. 400.

* But when a peer makes a deposition, or is examined *vivâ voce*, as a witness, either in civil or criminal cases, he must be sworn. For the respect which the law shews to the honour of a peer, does not extend so far as to overturn a settled maxim; that “*in judicio non creditur nisi juratis*.”—1 Bl. Com. 401.

honour of peers is so highly tendered, that to spread false reports of them and certain other great officers of the realm, is called *scandalum magnatum*, and subjected to peculiar punishment by divers statutes. So, a peer shall not be called upon to enter into a recognizance before ordinary magistrates, but only in some of the superior Courts. It is not competent to a plaintiff in an action, to sue out a Writ of Distringas to proceed to outlawry against a peer or member of Parliament (a). But the Courts of Law will grant a Distringas to compel an appearance to the action (b).

Peeresses, either in their own right or by marriage, by a special declaratory act, shall be tried before the same judicature as peers of the realm. If a woman, noble in her own right, marries a commoner, she still remains noble, but she communicates no rank or title to her husband. If she be only noble by marriage, then by a second marriage with a commoner she loses her dignity; for as by marriage it is gained, by marriage it is also lost. These are incidents of the peerage which may receive a transient notice; but our concern with the nobility here, is only as a separate branch of the Legislature, and our present inquiry should in strictness be confined to those who sit and vote in Parliament.

Peeresses.

The remaining privileges of Parliament, however essential and useful, are too remote from the subject of the present inquiry, and too wide and extensive in their consequences, to be comprehended in the present treatise. Of the peculiar privileges of the House of Commons, the most valuable in every point of view, has already been alluded to, and must frequently engage the reader's attention in the succeeding chapters. By this is meant the emphatic claim of "the sole right of beginning the grants of aids and supplies, and of directing and limiting the ends, purposes, considerations, and qualifications of such grants, without the lords having the power to alter or change them" (c).

Privilege quite peculiar to Commons.

(a) *Snape v. Earl of Waldegrave*, 1842, L. J.

(b) *Davis v. Earl of Lichfield*, 1 Dowl. P. C. New Series, 363.

Taylor v. Lord Stuart de Rothesay. 2 Dowl. P. C., N. S. 121.

(c) Commons' Journal, 3 July, 1678.

CHAPTER IV.

The routine of introductory business in Parliament.—Practice and proceedings in Parliament.—Who may sit and vote in Parliament.—The manner of taking the Chair, putting the Question and giving the Votes.—Divisions.—Proceedings between the two Houses.—Impeachments.—Bills of Attainder.—Pains and Penalties.—Adjournment.—Prorogation.—Dissolution.

THE Commons having chosen and presented their Speaker, their choice having been approved by the King, and the Speaker having preferred the usual prayers on behalf of the Commons, little remains to be noticed before the commencement of the session, except the laws as to taking the oaths, and those relating to the qualifications of members.

Oaths taken by members.

On returning from the Lords, the Speaker reminds the House, that their first duty is to take and subscribe the oaths required by law; and himself first, on the step of the chair, takes the oath of abjuration, and delivers to the clerk, an account of his qualification. Other members present, pursue the same course till four o'clock, when the House adjourns. The two following days are usually devoted to members taking the oaths.

Roman Catholic oath.

By an act for the relief of his Majesty's Roman Catholic subjects, which received the royal assent 13th April, 1829, the various acts requiring the declaration against transubstantiation and the declaration against transubstantiation and the invocation of saints and the sacrifice of the mass, as practised in the church of Rome, or either of them, to be made and subscribed by any of his Majesty's subjects as a qualification for sitting and voting in Parliament, are repealed. And it is thereby enacted, that it shall be lawful

for any person professing the Roman Catholic religion, being a peer, or member of the House of Commons thereafter returned, to sit and vote in either House of Parliament, being in all other respects duly qualified, upon taking and subscribing an oath thereby substituted, instead of the oaths of allegiance, supremacy and abjuration.

Affirmations, instead of oaths, are now received from Quakers and others who have a conscientious objection to an oath; though formerly a refusal to take the oaths was held to amount to a disqualification. In 1833, Mr. Pease, a Quaker, was admitted to sit on these conditions; and since that time, members of different religious denominations have made affirmations instead of oaths.

Affirmations of Quakers and others.

Acts of indemnity have frequently passed to relieve those members who have inadvertently omitted to take the oaths, from the penalties and disabilities which are the prescribed consequences of their neglect.

Indemnity acts.

On the first day of the meeting of every new Parliament, the Lord Steward of his Majesty's household used to attend in a room adjoining the House of Commons, and administer the oaths of supremacy and allegiance to the members present; he then executed a commission or deputation, empowering any one or more of a great number of members specified in it, to administer the oaths to others. If a new Lord Steward was appointed in the middle of a Parliament, it was necessary (a) for him, immediately after his appointment, to make a deputation, in order that members taking their seats after that time might be sworn under such deputation, and not under that of his predecessor.

Formerly oaths taken by members before Lord Steward or deputation.

At the period of the publication of the first edition of this Treatise, leave was taken to animadvert upon the idle and unbecoming repetition of the oaths of allegiance, supremacy and abjuration, then practised. The former reprehensible practice has since been discontinued, and the oaths in the House are now all that are taken. For besides the oaths of allegiance and supremacy, administered by the Lord

(a) 2 Hatsell, 84.

Oaths taken at
the table in the
House.

Time of taking
the oaths.

Oath of
qualification.

Return book
signed.

Steward or his deputy or deputies, under the acts 5 Eliz. c. 1, s. 16—7 Jac. 1, c. 6, s. 8, and 1 Wm. and Mary, c. 8, (by which latter act the former oaths of supremacy and allegiance are altered, and others substituted in their room), every member was required by the act 30 Car. 2, st. 2, to take the same oaths of allegiance and supremacy, and to make and subscribe the declaration against transubstantiation, at the table in the middle of the House, the House then sitting, with the Speaker in the chair, between the hours of nine in the morning and four in the afternoon. And by 13 Wm. 3, c. 6, s. 10, every member is to take the oath of abjuration at the table, in the same manner, and between the same hours, as he takes the oaths of allegiance and supremacy under the statute Car. 2. This limitation of time (viz. nine in the morning and four in the afternoon) is said to be the reason why, in general, the House meets at a quarter before four in the afternoon, and why the Speaker will continue to sit in the chair till four o'clock, although it shall have appeared, by a division or otherwise, that forty members are not present (*a*). It is also for the same reason, that if forty members do not appear before four o'clock, the Speaker waits till that hour, and then takes the chair and adjourns the House.

Besides the oaths of allegiance, supremacy and abjuration, already enumerated, every member within the provisions of the Qualification Acts, before he presumes to vote in the House of Commons, is required by 33 Geo. 2, c. 20, to take the oath of his being qualified, and to deliver in his qualification at the table, without which he may not sit or vote. And by the last act 1 and 2 Vict. c. 48, s. 6, if he make a false declaration, he is guilty of a misdemeanor.

A member also, at this period, subscribes the return book in the custody of the clerk of the House.

Members (*b*) chosen at a general election, and such members as coming in upon petition, are decided to have

(*a*) 2 Hatsell, 90.

(*b*) 2 Hatsell, 84.

been duly elected at that time, (in which case the returns will be amended by the clerk in the House); proceed at once to the table, and there take the oaths appointed, and subscribe the declaration. But the practice is different with new members; that is, with persons who are chosen upon vacancies that happen after the general election, who bring with them a certificate of their return from the Clerk of the Crown. These fall within the (a) rule of the House: "Resolved, that the ancient order be observed; that upon new members coming into the House, they be introduced to the table between two members, making their obeisances as they go up, that they may be better known to the House."

Introduction of members.

When a member appears (b) to take the oaths within the limited time, (before four o'clock), all other business is to cease, and not to be renewed till he has been sworn, and has subscribed the roll. In the event of the demise of the Crown, all the members again take the oaths by stat. 6 Anne, c. 7.

Notwithstanding (c) all these laws which are introductory to a member's taking his seat in the House, a person when returned is, though he should not have taken his seat, to all intents a member, except as to the right of voting, and is entitled to the same privileges as every other member of the House. Insomuch that, 13th April, 1715, the House determine: "That Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not been sworn at the clerk's table."

The Commons are now summoned to the House of Peers, to hear the King's speech, and as many of the members as choose, accompany the Speaker to the Lords. Although the Lord Chancellor no longer addresses the two Houses at the opening or close of a session of Parliament, he still is the bearer of the royal speech, which, kneeling, he delivers into the hand of the Sovereign. Though, when he addresses

Commons summoned to hear the King's speech.

(a) 23rd Feb. 1688.

(b) 2 Hatsell, 85.

(c) Id. 83, *in notis*.

their lordships, the Chancellor is to be uncovered, when he addresses others, including a deputation from the Commons, he is covered. When he appears in his official capacity in the presence of the Sovereign, or receives messengers from the House of Commons at the bar of the House of Lords, the Lord Chancellor bears in his hand the purse supposed to contain the Great Seal. On other occasions this is carried by the purse-bearer or lies before the Lord Chancellor as the emblem of his authority (a).

Commence-
ment of the
session.

A bill read
pro formâ.

Before the subject of the King's speech is taken into consideration, it has been the usual (b), though not invariable (c), practice in both Houses, to have a bill which has been prepared by the clerk read *pro formâ*. This Hatsell considers (d) as nothing more than asserting the claim of not being obliged to give precedence to the subjects contained in the King's speech. But this reason, though plausible, perhaps savours somewhat of refinement. In point of fact, what is it but a step taken, an advance made, towards holding a session, and thereby securing the privileges which were considered only to belong to a Parliament that had *met and sat*? Looking at it in this view, may there not be seen, in that circumstance alone, a sufficient ground and probable reason for its adoption? In the House of Lords (e) it is settled by one of their standing orders, "that at the beginning of the session, after prayers said, some bill *pro formâ* is to be read; then his Majesty's speech is to be reported; and then the committee of privileges is to be appointed." In the House of Commons (f), Hatsell is of opinion, that the reading of the bill being for form's sake only, it may be suspended till after other matters, if the House shall think the consideration of those other matters of greater importance. But in Wilkes' case, in 1763, when Mr. Grenville and Mr. Wilkes rose together in their places, one to deliver a message from th

(a) Introduction to Lives of the Chancellors.

(b) 22nd March, 1603. 7th April, 1614.

(c) *Contra*, 20th March, 1669th April, 1713.

(d) 2 Hatsell, 292.

(e) 2 Hatsell, 76.

(f) 2 Hatsell, 78.

King, and the other to complain of a breach of privilege, and the Speaker informed the House that a bill was ready, the question of precedence was discussed,* and decided in favour of the bill. In this case it could not have been read merely as a claim of right that the Commons were at liberty to proceed, in the first place, upon any matters which they might think material, without being limited to give a preference to the subjects contained in the King's speech. In 1840, a question of privilege arising out of the action of Stockdale and Hansard, was entertained before any notice was taken of her Majesty's speech. New writs are constantly issued for places where the seats have become vacant during the recess: Returns are ordered, and even addresses presented, on matters unconnected with the speech.

At the same time the doctrine which the practice is supposed to assert, (though without a necessity from its being, or being likely to be, called in question), is constitutionally sound, and scarcely ever disputed. A declaration (*a*) of the cause of summons, it has been stated before, is considered absolutely necessary to the opening of the session; but the two Houses are not therefore obliged to proceed *first* (*b*) to the consideration of the matters expressed in the King's speech, or to confine their deliberation to the subjects recommended to them by the Crown. So monstrous a pretension was indeed never advanced at any period of our history, except by that infatuated prince, Richard 2, who, being bent upon extending the prerogative, consulted all the judges of England upon the subject, ("from whom," says Professor Millar (*c*), "he found no difficulty in procuring an unanimous opinion, agreeable to his wishes,") and received from them what with abundance of reason has

(*a*) *Elsynge de Summonitionis causâ*, c. 4.

(*b*) 2 Hatsell, 291.

(*c*) Historical View of the English Government, book 2, c. 5.

* So, on the 15th Feb. 1676, a very long debate arose upon the same question, "Whether, in point of form, it was not regular to read a bill towards opening the session?"—*Grey's Debates*, vol. iv. p. 64.

been called a very 'extraordinary answer' (a): "That the King, when the Parliament is assembled, has the governance, and may appoint what shall be *first* handled, and so gradually what next, in all matters to be treated of in Parliament, even to the end of the Parliament; and if any act contrary to the King's pleasure made known therein, they are to be punished as traytors" (b).

Hakewill assigns (c) yet another reason for the practice. "The day that the Speaker being approved by the King, cometh down into the Commons' House to take his place, the custom is to read, for that time only, one bill, left unpassed the last session, and no more, *to give him seisin as it were of his place.*"

Report of the King's speech.

Address of thanks.

How presented.

Committees appointed.

After a bill is read *pro formâ*, the King's speech is reported to the House from a copy prayed by the Speaker, "for," as he says, "the greater accuracy." An address in answer to the speech, is then moved and seconded, and, if it is carried, a select committee is appointed to draw up the address. When the address is prepared, reported and agreed to, it is presented to the King by the whole House, or by such particular members as are of the privy council.

The usual committees were anciently at this time appointed, and orders made. "The Commons in Parliament assembled, being the general inquisitors of the realm, have principal care in the beginning of Parliament," says Lord Coke, "to make appointment of committees" (d). There were formerly five standing committees appointed in the beginning of Parliament. Standing committees were for—

Standing committees.

1. Privileges, (including elections);
2. Religion;
3. Grievances;
4. Courts of Justice;
5. Trade.

The Committee of Privileges always had precedence of all other committees. Its power was to examine and consider all questions "which shall grow and arise in that Parlia-

(a) 2 Hatsell, 202, *in notis.*

(b) Parl. Hist. vol. 1, p. 408.

(c) Hakewill, 139.

(d) 4 Inst. 11.

“ment about elections, returns, and other privileges,” and to report the proceedings, with their opinions thereupon, to the House, from time to time.

The Committee of Trade hath sometimes been a select committee particularly named; sometimes a grand committee of the whole House.

The Committee of Justice, it was said, might summon any of the judges and examine them in person, upon a complaint of misdemeanors in their office. So unconstitutional and mischievous a power is well and happily got rid of.

Since 1832, the annual appointment of the ancient grand committees—for religion, for grievances, for Courts of Justice, and advancement of trade, has been discontinued.

The Grand Committee of Privileges, which is now a sessional committee, (as is also the committee of expiring laws (*a*)), is still appointed, but no members are nominated upon it. Is this, under existing circumstances, a prudent course? Committees of Supply, and Committees of Ways and Means, are committees of the whole House, which together with the Appropriation Bill, will be more conveniently considered hereafter. They are only mentioned now because they are appointed at the commencement of the session. When the address in answer to the King's speech is agreed on, the House orders the speech to be taken into consideration on another day. When that day arrives, the speech is again read by the Speaker; a motion is made that a supply be granted to his Majesty, and the House resolves that, on a future day, they will resolve themselves into a committee to consider of the motion. This is the Committee of Supply, and a Committee to consider of ways and means for raising the supply naturally follows.

Sessional committees.

The proceedings in Parliament are governed by ancient usage and established practice, and are further regulated by orders and resolutions of both Houses. Of the latter, the first to be considered are Standing Orders; which if not

Orders made.

Standing orders.

(*a*) Lord Colchester, *Synthetical Table* prefixed to the Index to the Commons' Journal.

rescinded endure from one Parliament to another, and are of equal force in all; but which are occasionally "suspended," and often fall into desuetude. In the House of Lords, indeed, particular attention is paid to the making and recording of Standing Orders. In the Upper House no motion can be granted for making a Standing Order, or for dispensing with one the same day it is made, before the House has been summoned to consider of it (*a*). And every new Standing Order, when agreed to, is added to the "Roll of Standing Orders," which is carefully preserved and published from time to time. In the House of Commons there is no authorized collection of Standing Orders, except in relation to Private Bills.

Sessional orders.

The next are Sessional Orders, renewed from year to year. At the commencement of each session, both Houses agree to certain orders and resolutions, which are not intended to endure beyond the existing session.

General orders and resolutions.

Orders and resolutions of either House, not made permanent or of any determinate duration, are concluded by a prorogation. They are often, however, observed in succeeding Parliaments, though not binding without a renewal: the House regarding its former orders as evidence of the settled practice.

Places in the House of Lords.

The Lords, it is directed by one of their orders, are to sit in the same order as is prescribed by the act of Parliament 31 Hen. 8, c. 10, "except that the Lord Chancellor "sitteth on the woolsack as Speaker to the House." His proper seat (assuming him to be a peer), is at the top of the Dukes' bench, on the left of the throne, though for convenience he sits on the uppermost sack in the Parliament chamber, called the Lord Chancellor's woolsack; a place not within the House. The Bishops sit in the upper part of the House, on the right of the throne. The Ministers on the front bench adjoining—the opposition on the left of the throne, the neutrals on the cross benches.

Places of members for London, at open-

In the House of Commons, on the opening of a Parliament, the four members of the city of London (*b*) claim a

(*a*) Lords' S. O. No. 104. (*b*) 2 Hatsell, 8.

right of sitting on the lower bench, on the right hand of the Speaker, and generally exercise it; at other times this is called the Treasury Bench, (and, as appears from the ancient Journals, used to be reserved for privy counsellors), and is now, by the favour of the House, left for the Lords of the Treasury, and other members in great offices, who are supposed to be prevented by their avocations, from coming down to take places for themselves. But this too is matter of courtesy, and not of right. It is related that Mr. Pulteney, when in the height of opposition to Sir Robert Walpole, always sat on the Treasury Bench. Of right, no member can claim any other seat than what he has taken at prayers, or finds vacant afterwards, on his coming into the House: it is, however, frequently allowed to members who have passed through the great offices, to keep the same seat, without being put to the inconvenience of coming down to take it.

ing of Parlia-
ment.

Treasury
Bench.

It is commonly understood that members who have received the thanks of the House in their place, are entitled to that place whenever they come to the House, at least during that Parliament; and it is generally allowed them by the courtesy of the House (a).

Place of mem-
bers who have
received
thanks.

A place can only be secured by being present at prayers. A card inscribed "at prayers," with the member's name, can always be put into a bronze plate affixed to the back of the seat.

It is the constant practice that members lose their right to their seats by attending the Speaker to the House of Lords, when sent for by a messenger from the King. The right to seats is also lost on a division.

Places lost by
attending the
Speaker, or on
a division.

Disputes have often arisen where a member has by himself taken a place before prayers, and left a book or glove in the place, and not being in the place at prayers, but coming in during prayers, finds another member in his place, which of the two has the right to the place? It is said on the one hand, that the rule of the House is, that the mem-

Taking and
keeping places.

(a) 2 Hatsell, 94.

ber is to be at prayers, and that this cannot be known unless he is in his place. To which it is answered (*a*), that it is not necessary that he should be there “at the beginning” of prayers; that having left a token in the place, it is his, till he has forfeited it by not being present in the House during any part of the prayers, and that no member is entitled to remove that token or to take his place till prayers are over; because a member coming into the House after prayers are begun, ought to make as little disturbance as possible, and to kneel down as close as he can to the door; and that it would be hard to lose his place because he comes in but a moment after prayers are begun. There has never been any determination of the House upon this “important question;” but Hatsell believed the latter to be the true doctrine, and to have been the opinion of the oldest members as to the practice of the House.

Name not now
affixed before
prayers.

Now, by a Standing Order of April 6, 1835: “No members’ names may be affixed to any seat in the House “before the hour of prayers.”

What by right,
what by
courtesy.

“If a member be present at prayers, and have put a card at “the back of his seat, he will be entitled to the seat for the “night, unless a division intervene. But should a member “who had not been present at prayers, leave his seat, there “is no rule of the House, as laid down by Mr. Speaker (*b*), “which gives him a claim to return to it. But, by courtesy, “it is usual to permit a member to secure a place in his “absence, by a book, glove or hat.”

Who may sit
and vote in
Parliament.

Under the head of the practice and proceedings in Parliament, it will here be proper to give a succinct account of the persons who may sit and vote in Parliament, and the manner of putting the question and giving the vote in both Houses.

This subject will be distributed into the following branches of inquiry:—

1st. Who may sit and vote in Parliament.

2ndly. The manner of sitting and voting in Parliament.

(*a*) 2 Hatsell, 87.

(*b*) 14 April, 1842.

The first regards the eligibility or disqualification of members; their rank and precedence; and the attendance or excuses for absence of those who are entitled to vote. The second involves the topics of motions, debates and divisions, with their respective incidents.

Besides the principal function of a legislative assembly, the passing of bills, (reserved for the next chapters); there are certain sessional forms of proceeding; ceremonies in the House and out of the House; proceedings between the two Houses; particular acts and duties of the Speaker, the Clerk, &c.; which fall under the category before laid down, and which it will now be fitting to describe concisely.

The mode of the adjournment, prorogation, and finally, dissolution of Parliament, will properly form the conclusion of the present branch of the inquiry.

The two Archbishops of Canterbury and York, and twenty-four bishops of the Church of England, have seats in Parliament. The Bishop of Sodor and Man has no seat in Parliament. Four Bishops of the Church of Ireland were added on the Union of that country with Great Britain: of which four Lords Spiritual, an Archbishop of the Church of Ireland is always one. The four Spiritual Lords of Ireland sit in Parliament by rotation of session, and represent the whole episcopal body of Ireland in Parliament (a).

What Spiritual
Lords sit, and
how.

The temporal Lords sit some of them by descent, as all ancient peers; some by creation, as all newly made ones; others, since the Unions with Scotland and with Ireland, by election; which is the case of the sixteen peers who represent the body of the Scots nobility, chosen for one Parliament only; and of the twenty-eight elected for life by the peers of Ireland. These latter have rank next after the peers of the same rank and degree in Great Britain, subsisting at the time of the Union with Ireland.

What temporal
Lords sit in
Parliament,
and how.

The power of the Crown to add to the number of Irish peers is limited by the fourth article of the Union with that

(a) 39 and 40 Geo. 3, c. 67.— Wm. 4, c. 37, s. 51, 52.
40 Geo. 3, (Irish) c. 29. 3 and 4

country. The King or Queen can only create a new Irish peer, whenever three of the peerages of Ireland, which were in existence at the time of the Union, have become extinct. But if it should happen that the number of Irish peers should be reduced to one hundred, then one Irish peerage may be created as often as one becomes extinct; or whenever an Irish peer becomes entitled by descent, or creation, to an hereditary seat in the Imperial Parliament. The true intent and meaning of that Article of Union, is to keep up the Irish peerage to the number of one hundred (a).

Not aliens or
denizens.

By the common law all persons born *hors de ligeance* were aliens, and till the act of Settlement, Scotch and Irish were not eligible to sit and vote. By the act of Succession, 12 and 13 Wm. 3, c. 2, it is provided that no person born out of the King's dominions, except of English parents, (although naturalized), shall be capable to be of the Privy Council, or a member of either House of Parliament. By the 1 Geo. 1, st. 2, c. 4, it is provided that no person should be naturalized unless in the bill exhibited for that purpose, there be a clause or particular words inserted to declare that such person is not thereby enabled to be a member of either House of Parliament. But this clause is repealed in particular cases, and then an act is passed for the naturalization, as was done in respect to Prince Leopold and to Prince Albert.

Not minors.

By a Standing Order of the House of Lords in 1685 (b), "no lord under the age of one and twenty years shall be permitted to sit in the House." It is only by virtue of this order that minors are excluded from sitting as peers, when they come to their honours by creation or descent. Those who are elected of the sixteen peers to represent Scotland, must, by an act passed by the Parliament of Scotland, incorporated in the act of Union, (5th Anne, c. 8, art. 25, sect. 12), be twenty-one years of age complete. No such provision is made for the twenty-eight Irish peers, by the act of Union of Great Britain and Ireland, 39 and 40 Geo. 3,

(a) Act of Union, article 4. (b) Lords' S. O. No. 93.

c. 67. There is, therefore, no act of Parliament upon this subject, respecting other peers, than the sixteen peers who represent the nobility of Scotland.

Before the order of the Lords, of 1685, on occasion of a writ of summons being issued to the Earl of Mulgrave, then under age, on the 21st of October, 1667, the matter was referred to the committee of privileges. On the 31st of October, the Lords, by the recommendation of the Committee of Privileges, referred two questions to the judges; of which the first was—"Whether a minor may sit in quality of a judge in any Court of Justice, by the law of England, and give judgment?" It was the unanimous opinion of all the judges, "That by the law of England, in the ordinary Courts of Justice, no minor can sit or give any judgment as a judge" (a). On the 18th of December, the House agreed to a declaration prepared by the committee of privileges: "That according to the law of the realm and the ancient constitution of Parliament, minors ought not to sit nor vote in Parliament."

In Lords.

But though such might always be the law, yet as affects the other branch of the Parliament, (the House of Commons), the practice was certainly different. "Many," says Sir Edward Coke (b), "sit by connivance, who if questioned would be put out;" it having been recently before that time laid down in debate (c), "That it was not fit that they should make laws for the kingdom, who are not subject to the law." The question is, however, now finally settled by the 7 and 8 Wm. 3, c. 2, which makes void the election of any person who is not twenty-one years of age.

In Commons.

Where a peerage descends to a person in holy orders, it has never been supposed that his sacred character would disable him from taking his seat in the Upper House. But the inferior clergy were pronounced by Lord Coke (d), (confirmed by two entries in the Commons' Journal) (e), to be ineligible to sit in the House of Commons; because they

Not clergy, in the House of Commons.

(a) Reported on the 6th of Nov. 1667.

(b) 10 March, 1623.

(c) 28 Nov. 1621.

(d) 4 Inst. 27.

(e) Com. Jour., 13 Oct. 1533; 8 Feb. 1620.

had, or might have, a voice in the House of Convocation. And though none but the beneficed clergy voted for the proctors or representatives in convocation (*a*), Lord Coke says that the exclusion applied equally to the lowest order or unbeneficed clergy. Another reason given is, "the prohibition of the clergy by the canons of the church from exercising secular jurisdiction." These reasons, if they have any weight, might have been urged with equal force for the exclusion of the bishops from the House of Lords, and in order to preclude the clergy from acting in the commission of the peace. When the clergy ceased to tax themselves, and were taxed in Parliament, (a most extraordinary change in the ancient constitution of the country to have taken place without an act of Parliament)! the former reason, such as it was, wholly ceased. When the clergy afterwards (and again without the intervention of any particular law—such was the prudence, or the supineness, of the Legislature)! assumed to vote at county elections, in right of their glebes, their claim to eligibility to be also returned as representatives, instead of being weakened, was considerably strengthened; for the capacity to elect and to be elected, were originally considered the same, and used as convertible terms.

Both in Scotland and Ireland, the clergy were declared ineligible by statute; and as in England most persons agreed in the propriety of confining the ambition of clergymen to their own profession (*b*), after an inquiry by a committee of the House, originating with the case of Mr. John Horne Tooke, (which first brought to light the fact that Sir Thomas Haxey, clerk, was, besides being a member of the Lower House, and a very sharp and active one (*c*), the proxy of the Earl of Nottingham in the House of Lords,) an act of Parliament passed, 41 Geo. 3, c. 73. By that act intituled, "An Act to remove Doubts respecting the Eligibility of Persons in Holy Orders to sit in the House of Commons," it was declared and enacted, that no person having been ordained to the office of priest or deacon was,

(*a*) 1 Woodison, 47.

Bl. Com. 175.

(*b*) See Christian's Note to 1

(*c*) See chapter 3, *ante*.

or should be, capable of being elected to serve in Parliament as a member of the House of Commons; and if any such person should now sit in the House, he shall forfeit £500 a-day, and be incapable of holding any office or preferment under his Majesty. The statute did not extend to members of *that* Parliament.

The Roman Catholic clergy are also excluded by 10 Geo. 4, c. 7, s. 9.

The Judges are not capable of being members of the House of Commons; (because they sit in the Lords' House, according to the Journals, 9 Nov. 1605): yet we have seen that Thorpe, a baron of the Exchequer, was Speaker of the House of Commons. Formerly the Attorney General was also excluded as being an assistant in the House of Lords, while the Solicitor General was admitted. At present, however, none of the assistants or attendants on the Lords are excluded from being members of the House of Commons, except the Judges. All the Judges, Scotch and Irish, as well as English, are disqualified (*a*). But the Master of the Rolls, who it is very absurdly and quite untruly said, decides, not *secundum legem terræ*, but *secundum æquum et bonum*, is not considered a judge. Masters in Chancery in England have been frequently members, and it is believed, are not now excluded from sitting in the House of Commons (*b*), though by 3 and 4 Wm. 4, c. 94, s. 16, it is provided that they (other than the Accountant General,) shall now be appointed by the King by Letters Patent. Their office is not made a new one under the 25th clause of the statute 6 Anne, because it has been subjected to a change of patronage (*c*). The Clerk of the Parliaments also has been elected, and permitted to sit as a member of the House of Commons.

Not judges; but all other assistants and attendants of the Lords may sit in the Commons.

Peers, it has been shewn already, compose a distinct part of the constitution, and are bound to serve the state in another capacity, incompatible with the character of representatives of the people; yet by statute, a peer of Ireland,

Not Peers; except Irish peers not of the twenty-eight elected Lords of Parliament.

(*a*) 1 and 2 Geo. 4, c. 44.

(*c*) North Berwick case, 2

(*b*) Galway case, F. and F. Dougl. 423.

not elected one of the twenty-eight, may sit in the House of Commons; but whilst he sits in the House of Commons he shall not be entitled to the privilege of peerage, nor be capable of being elected one of the twenty-eight Lords of Parliament, nor of voting at their elections; and he shall be sued and indicted for any offence as a commoner.

Not Scotch
peers.

Peers of Scotland are ineligible, being represented by the sixteen elected for Scotland.

Heirs apparent
of peers may;
except formerly
for Scotch
boroughs; now
permitted.

By the Scotch law, the eldest sons of Peers were disqualified from being elected commissioners of shires or boroughs in the Parliament of Scotland. There seems reason to believe that formerly the same law existed in England; but if so, it prevails no longer. Yet, till recently, the eldest son of a Scotch peer was incapable of electing or being elected one of the forty-five Scotch representatives. The eldest sons of Scotch peers, however, might represent any place in England, and many did. Now, by the 2 & 3 Wm. 4, c. 65, s. 73, this disability is altogether removed.

Not sheriffs
and other
returning
officers.

Sheriffs of counties, and mayors and bailiffs of boroughs, are not eligible in their respective jurisdictions, as being returning officers; but sheriffs of one county it is now held, are eligible to be knights of another. The Abingdon case (*a*) decides, that the sheriff of a county is not eligible for any town or borough within that county where the election proceeds by virtue of his own precept; the Southampton case (*b*) shews that this doctrine does not extend to those cities or towns (though within his county,) which are counties within themselves, and have sheriffs or returning officers to whom the writ issues immediately from the clerk of the Crown, without passing through the hands of the sheriff of the county at large, or requiring the intervention of his precept.

The reason formerly given, "why no sheriff should be of this House was, that they are the King's vicegerents, and are necessarily to be resiant in their governments."

(*a*) 1 Dougl. 419.

(*b*) 4 Dougl. 87.

This reason, viz. the obligation they were under by law, to reside in their counties during great part of their shrievalty, induced the House of Commons (*a*) not to permit them to be elected members even for other counties; or, being elected members, not to allow their being appointed sheriffs.

As the statute 3 Geo. 1, c. 15, takes away impliedly the obligation to residence, sheriffs are now eligible, except for those places where they are to make the return. And upon the same principle, all returning officers of every kind are ineligible for the city, borough, or cinque port, over which they preside (*b*). Not Sheriffs.

The Commons did not establish the claim to a privilege exempting their members from serving as sheriffs, without a severe struggle with the Crown; and it was by appointing him sheriff for Bucks, that Charles 1, succeeded in preventing Sir Edward Coke from sitting in the second Parliament summoned in that unhappy reign. On the 7th of January, 1689, it was resolved *nem. con.*, "That the nominating any member of the House to the King to be made a sheriff, is a breach of privilege;" and the House addressed the King to appoint another sheriff, which the King complied with. It seems now to be settled, that it is not lawful for any member of the House of Commons to be appointed by the King, sheriff of a county; but in London or Middlesex, where sheriffs are still chosen by the people, it is very customary for members of Parliament to be chosen; and, indeed, in those instances, the two services being both in the same county, are not, as in other cases, apparently incompatible with each other.

A member, by being appointed a returning officer, does not vacate his seat (*c*).

A person elected and returned a member, cannot by law be eligible for any other place, unless by the acceptance of an office under the Crown, (as that of steward of the Chiltern Hundreds, or of the manor of East Hendred and North- Not a member; unless he first vacates his seat.

(*a*) 2 Hats. 30. 32.

(*b*) Comm. Journ. 2 June, 1685.

(*c*) 1 Journ. 920.

stead, given to any member who applies for them;) or by some other act, he vacates his former seat. One reason of this is said to be, that though elected by the freeholders of a county, or the electors of a particular borough, he becomes, when elected, the representative of the whole commonalty of the kingdom, and therefore, says Hatsell (*a*), is already the legal representative of the county or borough whose seat is vacant. A more intelligible reason is, that otherwise the due number of the representative body would be wanting and incomplete.

There is a distinction however, between writs issued for a general election and writs issued pending a session of Parliament. The latter are returnable immediately; and when a person is elected, and the indenture of return is executed and returned into the Crown Office, from that instant the existence of the member, as a member of Parliament, commences, and he is no longer eligible for any other place. The writs issued at a general election are all made returnable on a certain and distant day, and the law takes no notice of the return of any person, so as to destroy his eligibility for any other place, till the day on which the writ is made returnable, the sheriff being at liberty to detain the writ till the very last hour. Thus, a person actually elected and returned for one place, may, by the practice at a general election, be afterwards elected and returned for a second, third, or fourth place, and may sit for which of the places he chooses; but such persons cannot make their election till fourteen days after their return. If the return for either place be petitioned against, the House will not order a new writ for either, until such petition be disposed of; but as soon as his return which was controverted, is affirmed, the member shall make his election (*b*).

A person not returned, but claiming a seat by petition for one place, may, pending such petition, be elected and returned for another place (*c*). If he succeed on his petition, he will have to make his election which place he will serve.

(*a*) 2 Hats. 72.

(*b*) Bletchingly case, Glan. 30.

1 Dougl. 169.

(*c*) Soresolved, 17th April, 1728.

Besides these disqualifications of members, there may be a want of qualification. For a property qualification is in most cases, essential to enable a member to sit in the House of Commons.

By the 9th of Queen Anne, c. 5, no person could be elected member for a borough, who had not an estate for life arising out of land, of the clear annual value of £300 above reprises; nor of a county, without being possessed of a like estate of £600 *per annum*. But it was provided that this should not extend to the eldest son or heir apparent of any peer or lord of Parliament, or of any person qualified to serve as a knight of the shire.

Property qualification of members essential.

Exceptions.

A mortgage is no qualification, until after the mortgagee has been seven years in possession.

In order to enforce the provisions of this law, it was enacted by the 33rd Geo. 2, c. 20, that before any member could take his seat, he should deliver in, at the table of the House of Commons, a paper, containing the name of the parish and county in which the lands lay, whereby he made out his qualification, signed by himself; and should also swear that he truly and *bonâ fide* was in possession of such estate as described in the paper, according to the tenor and true meaning of the acts. This act contained similar exceptions to the last, extending also to the members for the Universities, and to the members for Scotland. For in Scotland, no property qualification ever existed.

Exception.

By the act 1 & 2 Vict. c. 48, those two last-mentioned acts, and “an enactment in the act for the Union of Great Britain and Ireland,” were repealed, and “other provisions made in lieu thereof, for the better qualifying members to sit in the House of Commons by reason of the possession of property.” The amount of property required to constitute a qualification, remains the same, but instead of a freehold property in land, to the amount therein required, a member must be entitled for his own use and benefit, to real or personal property, or both together, to the amount of £300 a-year, to be a citizen or burgess; or of £600 a-year to be a knight of the shire. The exceptions

are the same as in the former acts; with the addition of Trinity College, Dublin, to the list of Universities before mentioned.

A seat was vacated in 1826, by the person returned, addressing a letter to the Speaker, stating that he had not the qualification of estate required by law (a).

Disqualifica-
tion from
offices under
Crown.

Persons having or holding new offices under the Crown, created since 1705, are incapable of being elected, or of sitting and voting as members (b); so the holders of pensions during pleasure.

Offices accepted immediately or directly from the Crown (chiefly by virtue of a provision in the 26th section of the act 6 Anne, c. 7), vacate seats in Parliament. By virtue of that act, whenever a member accepts office under the Crown, a new writ is ordered; but as the secretaries of the Treasury, the under secretaries of State, and the secretaries to the Admiralty and to the Board of Control, do not hold office by appointment from the Crown, their seats are not vacated. *Pari ratione*, the acceptance of any other office, of which the appointment does not vest in the Crown, will not vacate a seat; while by 41 Geo. 3, c. 52, s. 9, a nomination by the Lord Lieutenant of Ireland will have that effect. The various statutory provisions on this subject, seem to be the following: but there may be others which have escaped attention; and upon this head the reader is referred for more explicit information to the writers on the practice of elections.

By the 5th of William and Mary, c. 7, s. 57, an act for granting certain rates and duties upon salt, and upon beer, ale, and other liquors, &c., no member of the House of Commons shall at any time be concerned in the collecting or managing any of the duties granted by that or any future act of Parliament (since 1694), except the commissioners of the Treasury, and the officers and commissioners for managing the Customs and Excise (c).

(a) Southey's case, 82. Com. Fife case. 1 Luders, 455. Whittle Harvey's case, 1839.
J. 28.

(b) 6 Anne, c. 7, s. 25. See (c) 2 Hats. 56.

By the 11th and 12th of Wm. 3, c. 2, s. 150, the exception in the former act with respect to officers concerned in the Excise, is repealed; and such persons are declared incapable of sitting, voting, or acting as members. Disqualifying Acts.

And by the 12th and 13th of Wm. 3, c. 10, s. 89, the same provisions are extended to officers in the Customs.

It is observable that under these statutes, of the 5th of Wm. and Mary, c. 7, and 11th and 12th, and 12th and 13th of Wm. 3, the officers and commissioners for collecting the revenue, and for managing the Excise and Customs, are not disabled, or declared incapable of being elected to be members of the House of Commons. These laws only enact, "that no member of the House of Commons shall be concerned in collecting or managing certain duties, or shall be capable of being a commissioner, or of holding or enjoying any office or employment in managing the said duties; and that if he does enjoy or execute such office, he is declared to be absolutely incapable of sitting, voting, or acting, as a member in such Parliament." By the subsequent laws of the 6th of Queen Anne, c. 7, and the 15th Geo. 2, c. 22, the persons holding the offices enumerated in those acts, are declared incapable of being elected; and if such persons presume to sit and vote, they shall forfeit £500 (*a*). The former enactment refers only to a member who has actually taken his seat: if he divests himself of his office before the completion of his title, he is not within the meaning of the act.

By the 6th Anne, c. 7, s. 25, no person who shall have New offices. in his own name, or in trust for him, any new office or place of profit under the Crown, created since the 25th of October, 1705, nor a commissioner or receiver of prizes, nor comptroller of the accounts of the army, nor commissioner of transports, or of sick and wounded, nor any agent for any regiment, nor any commissioner for wine licenses, nor any governor or deputy governor of any of the plantations, nor any commissioner of the navy, nor any person having a pension from the Crown during pleasure, shall be capable

(*a*) 1 Dougl. 143.

Disqualifying
Acts.

of being elected, or of sitting or voting as a member of the House of Commons.

The persons here enumerated, are rendered totally incapable of being members; but by the 26th section, if "any member" shall accept of any office of profit from the Crown, his election is declared void, and a new writ shall issue; and such person shall be capable of being again elected. Thus, although the Galway case (*a*) has decided that a Master in Chancery in England is not ineligible to serve in Parliament, because his office is not a new one; yet it seems that the office is within the 26th section of 6 Anne, c. 7, and that any member accepting the office, his election will be avoided, but he will be capable of being re-elected (*b*).

And by the 27th section, no greater number of commissioners shall be constituted for the execution of any office, than have been employed at some time before the first day of that Parliament.

By the 28th section, nothing herein contained is to extend to any member of the House of Commons being an officer in the army or navy, who shall receive any new or other commission in those services.

By the 1st of Geo. 1, c. 56, no person having any pension from the Crown for any term of years, either in his own name, or in trust for him, shall be capable of being elected, or of sitting and voting as a member.

By the 15th of Geo. 2, c. 22, no commissioner of the revenue in Ireland, or commissioner of the navy or victualling offices, nor any deputies or clerks in any of the said offices, or in the office of the commissioners of the Treasury, or of the auditor of the Exchequer, or of the tellers or chancellor of the Exchequer, or of the Admiralty, or of the paymasters of the army or navy, or of the secretaries of state, or of the commissioners of salt, or stamps, or appeals, or wine licenses, or hackney-coaches, or hawkers and pedlars, nor any person having any office, civil or military, in Minorca or Gibraltar, (except officers having commission

(*a*) F. and F. 591.

(*b*) Rogers on Elections, 59.

in any regiment), shall be capable of being elected, or of sitting and voting. There is an exception for the treasurer and comptroller of the navy, the secretaries of the treasury, the secretary to the Chancellor of the Exchequer, and secretaries of the Admiralty, the under secretaries of state, the deputy paymaster of the army, and all persons holding any office or employment for life, or *quam diu se bene gesserint*. And by c. 13, s. 8, the governors, directors, or proprietors of the Bank of England, shall not be thereby incapacitated from taking their seats in Parliament.

Disqualifying
Acts.

By the 7th of Geo. 2, c. 16, s. 4, no Judge of the Court of Session or justiciary, or baron of the Court of Exchequer, in Scotland, shall be capable of being elected, or of sitting or voting. And by the 22nd of Geo. 3, c. 45, no person who shall hold or enjoy any contract entered into for the public service, shall be capable of being elected, or of sitting or voting as a member of the House of Commons. But contracts devolving by descent, limitation, or marriage, shall not incapacitate within twelve calendar months from the time of devolution.

By 41st Geo. 3, c. 52, s. 4, no commissioners of customs, excise, or stamps, or persons concerned in managing any duties or aids (except the commissioners of the Treasury, and their secretary); nor commissioners of appeals or control of the said duties (except the auditor-general of the Exchequer); nor commissioners of the impress account; nor any agent for any regiment; nor any party to any contract or commission from the Irish Treasury, or with any person on account of the public service in Ireland, unless such parties are members of any incorporated trading companies existing at the time of passing the acts in Ireland, consisting of more than ten persons, so far as the contract is entered into in their corporate capacity; nor any clerk or deputy of the high treasury or commissioners of treasury; or of the auditors or tellers of the Exchequer, or of commissioners of stamps or appeals (the secretary of the treasury and the secretary of the chancellor of the exchequer excepted); nor any person holding any office or place of profit under the Lord Lieutenant or lords justices created

Disqualifying
Acts.

since the 33 Geo. 3, shall be capable of being elected or chosen.

By the 42 Geo. 3, c. 90, s. 172, the acceptance of a commission in the militia does not incapacitate. The same provision has been made with regard to fencible corps and volunteer corps. In 1816 it was decided that the treasurership of Greenwich Hospital (*a*) is not a military or naval commission (*b*).

By the statute 45 Geo. 3, c. 91, s. 7, the commissioners appointed under that act for examining and auditing the public extraordinary accounts, are incapable of being elected, or of sitting as members of the House of Commons.

By the 46 Geo. 3, c. 80, s. 18, the commissioners for the examination of the accounts of the expenditure of the public money in the West Indies, who receive any salary for the execution of their duties as commissioners, are rendered ineligible.

By the 46 Geo. 3, c. 141, s. 22, the ten commissioners under that act for examining and auditing the public accounts, are incapacitated.

By 51 Geo. 3, c. 119, s. 14 and 15, justices of the peace and other persons employed under the Police Act, were incapacitated from sitting in Parliament, or voting at elections. So by 42 Geo. 3, c. 76, the justices at the seven police offices were disqualified.

By the 57 Geo. 3, c. 63, s. 5, every office and appointment belonging to and making part of the establishment of the offices of the clerks of the signet and privy seal respectively, shall be deemed and taken to be a new office within the true intent and meaning of the 6th Anne, and every person holding such office shall be incapable of sitting or voting as a member of the House of Commons.

By the 57 Geo. 3, c. 84, a similar provision is made with regard to appointments belonging to the offices of auditors and tellers of the Exchequer and clerks of the Pells.

By the 1 and 2 Geo. 4, c. 44, the Judges in Ireland and Masters of Chancery there, are excluded from Parliament.

(*a*) 18 Geo. 3, c. 59, s. 4. (*b*) *Male*, 49.
33 Geo. 3, c. 36.

By 3 Geo. 4, c. 55, s. 14, no justice at any of the eight police offices, shall be capable of being elected or of serving as a member. In like manner, the 1 and 2 Vict. c. 74, s. 7, disqualifies the Commissioner of Police for the City of London, from being elected, or sitting as a member of the House of Commons.

Disqualifying Acts.

By the 10 Geo. 4, c. 64, s. 1, no person appointed governor, or deputy-governor of any of the settlements, presidencies, &c. of the East India Company is capable of being elected; and by sec. 2, the election is declared void.

By the 2 Wm. 4, c. 45, ss. 41 and 49, which provides for the annual appointment of revising barristers, no revising barrister shall for eighteen months from the time of his appointment, be eligible for the place for which he was appointed.

By a proviso in the act 3 and 4 Vict. c. 65, for fixing the Judge's salary in the Court of Admiralty, it was provided "that any such Judge, after the present Parliament, shall, "during his continuance in office as Judge, be incapable of "being elected or sitting as a member of the House of "Commons."

The act for appointing Commissioners of Railways, 9 and 10 Vict. c. 105, after enabling her Majesty to appoint five Commissioners, and providing salaries for the President and two other Commissioners, enacts that neither the President nor the unpaid Commissioners shall be disqualified from sitting in Parliament.

In order that holding an office may disqualify, the actual occupancy and enjoyment of it must be shown; a mere title, if never acted upon, will not operate to disqualify.

Restriction of rule: applies only where actual occupancy and enjoyment.

Appointments by statute are not within the rule.

Exceptions to rule: appointments by statute; or nominations by Parliament, and not by the Crown.

In the 23 Geo. 3, c. 80, by which commissioners were appointed to inquire into the losses of the American loyalists, no clause was inserted to exclude them from being members of the House of Commons^(a); because they were nominated by Parliament in the act and not by the Crown,

(a) 2 Hats. 57.

Exceptions.

and therefore not thought to fall within the spirit and purview of the act of Queen Anne.

The stat. 39 Geo. 3, c. 94, s. 5, enacts, that the 22 Geo. 3, c. 45, shall not extend or be construed to extend to the person holding the office of master or worker of the mint, the covenant in the indenture made between his Majesty and the master of the mint not being within the nature of the contracts intended by that act.

By the 39 and 40 Geo. 3, c. 97, no member and other officer of the London Flour Company shall, for that cause only, be disabled from being a member of Parliament.

By the 42 Geo. 3, c. 89, commissioners under that act, relating to the ordnance at Woolwich, are eligible.

By 50 Geo. 3, c. 65, s. 21, commissioners of the woods and forests, appointed under that act, may be elected, and sit in Parliament.

So, by 50 Geo. 3, c. 116, may commissioners for the redemption and sale of the land-tax.

And by 57 Geo. 3, c. 66, the vice-president of the board of trade is made eligible.

By 10 Geo. 4, c. 50, s. 21, only one of the commissioners of his Majesty's woods and forests is capable of sitting and voting in the House of Commons.

By a vote of the 9th June, 1833 (*a*), resolved that the accepting a commission of governor or lieutenant-governor of any fort, citadel, or garrison, upon the military establishment, by a member "being an officer in the army," does not vacate his seat. An appointment to a colonial government does vacate a seat by 6 Anne, c. 7, s. 35, *ante* (*b*).

General disabilities not statutory.

To the list of persons under disabilities, either to be chosen as members, or to sit in Parliament, or both, may be added, women, idiots, lunatics, persons born deaf and dumb, (which ground of exclusion admits at present, perhaps of some doubt,) traitors, felons, and persons declared incapable by a vote of the House.

Partial disabilities.

There exist some disqualifications which are partial or temporary, and capable of being removed; cases in which persons are incapacitated *sub modo*. Thus members be-

(*a*) C. J. 208.(*b*) p. 198.

coming bankrupts are disqualified, from sitting or voting for twelvemonths, unless the commission be superseded, or the creditors paid or satisfied. But of this the Speaker can know nothing, unless the member be petitioned against. At the end of the year the Commissioners are required to certify the bankruptcy to the Speaker, and the seat becomes vacant (a).

Bankrupts.

So, it has been seen that by the 26th section of the statute 6 Anne, a member accepting an office of profit from the Crown, vacates his seat; but then he is capable of being again elected.

Those who may be re-elected.

In this case of the acceptance of an office, it is the practice to move for a new writ, upon the person appointed kissing the King's hand. But in the case of a peerage it is different. In the case of a peerage by descent, the instant the ancestor dies, the heir becomes a peer, and his seat in the House of Commons is immediately vacant (b). There is no necessity to wait for the issuing of the writ to call such heir to the House of Peers; for without his writ of summons, or though he should never take his seat there, he is to all intents and purposes whatsoever a peer of the realm. And if his writ of summons were delayed, the House of Commons would nevertheless consider his seat among them as vacated, and would order a new writ.

When seat considered to be vacated.

In case of peerage by descent.

When a person is created a peer, there are several steps in the proceeding. First, the King's warrant issues for the making out the letters patent; which, when made out, are carried to the Chancellor to be passed under the great seal. As soon as the letters patent are brought to the Chancellor, he indorses his *recepti* upon them; and whenever they are afterwards sealed, the date of passing them under the great seal must, by virtue of the 18 Hen. 6, c. 1, be the same with the date of the *recepti*. If either the King, or the person to be created a peer, should die before the *recepti* be indorsed, though the warrant should have been signed, it is certain that no person could receive any benefit from it. But there seems reason to believe, that if the *recepti* be indorsed, the person named in the patent will be entitled to the effect of

When a member is created a peer.

(a) 52 Geo. 3, c. 144.

(b) 2 Hats. Appendix, No. 1.

it from that date, and the Chancellor warranted in putting the seal to the patent, in case of the occurrence of either or of both of the events before alluded to. It followed, (in the opinion of Mr. Speaker Onslow,) that after it was known, in any such case, that the *recepti* was indorsed, the House of Commons ought not to suffer the person named in the patent to continue any longer to sit and vote as a member of that House.

Who are
eligible.

Ambassadors.

With these conditions, exceptions, and restrictions, all persons are eligible of common right. Thus an envoy at a foreign court is not disqualified. In the year 1620 (*a*), Sir Edward Coke says: "Those who are employed abroad
"are without question eligible, though absent when they
"are chosen; for *absentia ejus, qui reipublicæ causa abest,*
"*non obest.*" On the 7th July, 1715, a determination took place in the case of General Carpenter, who had been appointed envoy to Vienna; since which time it has been the received doctrine, that ministers employed abroad, do not thereby vacate their seats. And though it sometimes happens that the boroughs for which foreign ministers are elected, are, from the long residence of their representatives abroad, deprived, as it were, of the privilege of sending a member to Parliament, yet, from other considerations, this was a wise and proper determination. If it had been different (*b*), James I. and Charles I. would have assuredly availed themselves of this disability, and sent Sir Edward Coke, Mr. Selden, and Mr. Pym, to execute some public business at a distance.

Ambassadors,
outlaws, pri-
soners, may be
elected.

And besides ambassadors and foreign ministers absent from the country, other persons abroad, and elected before their return, outlaws in civil suits, prisoners for debt on *mesne* process, or persons charged in execution, petitioners against a return, and all other subjects of the realm, are capable of being elected and of serving in the House of Commons (*c*).

On the 2nd March, 1623, agreed: "That a man, after he

(*a*) Parl. Debates, vol. 1, p. 49.

(*b*) 2 Hats. 24.

(*c*) 18 Eliz. 1575, R. H. C.

“is duly chosen, cannot relinquish;” “for that,” says Serjeant Glanville, “were to prefer the will or contentment of a private man before the desire and satisfaction of the country.” So, although members should labour under age or infirmity, unfitting them for the duties of the station, yet, if chosen, they are not to be discharged but by operation of law. A member, therefore, cannot be discharged, though his disorder be incurable. The impossibility of ascertaining the degree of infirmity under which a man may labour, and of pronouncing him incurable, is a sufficient cause for not removing him, though to all appearance he may never be able to attend again; besides, that such a practice would open a door for members to quit their seats under this pretence. Nor is a member discharged, though “a captive.” Yet supervening mental imbecility is a disqualification, and, should a member, who was sane at the time of his election, afterwards become a lunatic, his seat may be avoided: as was done in the Grampound case in 1566 (a).

Sick, infirm, incapable of attending, being elected, cannot relinquish, and are not removable for sickness.

According to ancient usage, for which 5 Rich. 2, is cited (b), a member, whether peer or commoner, neglecting to attend, in discharge of his Parliamentary duties, might be amerced and otherwise punished; as, in one case, “ordered into custody, for not attending,” and “continuing to abscond, expelled” (c). A member of the House of Commons, absent without leave entered in the clerk’s book (d), of course lost his wages. “No baron, knight, citizen, or burgesse, who shall be chosen to come to the Parliament, shall depart until that Parliament be ended or prorogued, if he have not licence of the Speaker, and of the Commons assembled in the Parliament; which licence shall be entered in the book of the clerke of the Parliament appointed for the Commons’ House, upon pain of losing their wages, whereof all counties shall be discharged” (e). In 1 & 2 Phil. and Mary, informations were preferred by the

Attendance both of peers and commoners, enforced under penalty of fine or expulsion.

(a) D’Ewes. 126.

1615.

(b) 5 Rich. 2, s. 2, c. 4.

(d) Hakewill, 54.

(c) Pryse’s case, 7th March,

(e) 6 Hen. 8, c. 16.

Attorney General against thirty-nine of the House of Commons, for departing without license, whereof six submitted to fines.

Pairs.

In the House of Commons, no member can vote unless he be present when the question is put. But by a system well understood, a member is enabled to absent himself, and to agree with another member of the opposite party that he also shall be absent for the same time. Thus a vote is neutralized on each side of a question, and members pair with each other, not only upon particular questions, but for several weeks or months at a time.

The next consideration is, in what manner do Lords and Commoners, in their respective Houses, sit and vote in Parliament? And first of their rank and precedence:

Manner of sitting in Parliament.

Precedence.

The Archbishop of Canterbury is the first in rank of the spiritual and temporal lords, there being now no such office as "the King's vicegerent," appointed "for the exercise of the most royal dignity and office, appertaining to the King's majesty as justly and lawfully supreme head on earth of the church of England under God."

Lords how sit.

By the statute 31 Hen. 8, c. 10, intituled "An Act concerning placing the Lords in the Parliament Chamber, and other assemblies and conferences of council," and reciting: "Forasmuch as in all great councils and congregations of men having sundry degrees in the commonwealth, it is very requisite and convenient that an order be had and taken for the placing and setting of such persons as are bound to resort to the same, to the intent that they, knowing their places, may use the same without displeasure or let of the council," it is enacted as follows: "that no person or persons of what estate, degree, or condition soever, he or they be of, (except only the King's children,) shall at any time hereafter attempt or presume to sit and have place at any side of the cloth of state in the Parliament Chamber, neither the one of the King's highness, nor of the other, whether the King's majesty be there personally present or absent."

Their rank and precedence.

And it is enacted, "that next to the King's vicegerent

“ shall sit the Archbishops of Canterbury and York ; and
“ then next them, on the same form and side, the Bishop of
“ London ; and next to him on the same form and side, the
“ Bishop of Duresme ; and next to him, on the same form
“ and side, the Bishop of Winchester ; and then all the
“ other Bishops of both provinces of Canterbury and York,
“ shall sit and be placed on the same side after their
“ antienties, as it hath been accustomed.” Now, the two
Archbishops sit upon one form, and the other Bishops in
order, upon two forms on the right hand of the chair of
state.

“ And forasmuch as such persons as have now, or here-
“ after shall happen to have, other great offices of the realm,
“ that is to say the office of the lord chancellor, lord
“ treasurer, lord president of the King’s council, the lord
“ privie seal, the great chamberlain of England, the marshal
“ of England, the lord admiral, the grand master or lord
“ steward of the King’s most honourable household, the
“ King’s chamberlain, and the King’s secretary, have not
“ heretofore been appointed and ordered for the placing
“ and sitting in the King’s most High Court of Parliament,
“ by reason of their offices ; it is, therefore, now ordered and
“ enacted, that the said lord chancellor, lord treasurer, the
“ president of the King’s council, and the lord privie seal,
“ being of the degrees of barons or above, shall sit and be
“ placed, as well in this present Parliament, as in all other
“ Parliaments hereafter to be holden, in the left hand of
“ the Parliament Chamber, on the higher part of the form
“ on the same side, above all dukes, (except only such as
“ shall be the King’s son, the King’s brother, the King’s
“ uncle, the King’s nephew, or the King’s brothers, or
“ sisters’ sons).

“ And it is also ordained and enacted, by the authority
“ aforesaid, that the great chamberlain, the constable, the
“ marshal, the lord admiral, the grand master, or lord
“ steward, and the King’s chamberlain, shall sit and be
“ placed after the lord privy seal in manner and form
“ following ; that is to say, every one of them shall sit and
“ be placed above all other personages being of the same

“ estate or degree that they shall happen to be of, that is to
 “ say, the great chamberlain first, the constable second,
 “ the marshal third, the lord admiral fourth, the grand
 “ master or lord steward fifth, and the King’s chamberlain
 “ the sixth.

“ And it is also enacted, by authority aforesaid, that the
 “ King’s chief secretary, being of the degree of a baron of
 “ the Parliament, shall sit and be placed above and before
 “ all other barons not having any of the offices afore
 “ remembered, and if he be a bishop, above all other
 “ bishops, &c.

“ All dukes not afore mentioned, marquesses, earls, vis-
 “ counts, and barons, not having any of the offices aforesaid,
 “ shall sit and be placed after their ancientry, as it hath
 “ been accustomed.”

The official rank given by this act is further directed to be enjoyed by the persons then holding the offices enumerated above, on all trials of treason by peers of the realm, and as well as in all Parliaments, so also, in all other assemblies and conferences of council.

Judges where
to sit.

The judges sit upon sacks of wool (*a*), *in medio cameræ*, on the inner side of the woolsacks. Although they are called to Parliament by the King’s writ, to treat of the *ardua et urgentia negotia regni, et consilium impensuri*, and swear in their oath to counsel the King truly in his business, they have no vote amongst the Lords. Their office there, is to inform the House upon writs of error and questions of law, what the law is, and to guide and assist the Lords in their judgments.

The King in
his chair of
state.

His Majesty sits “in the chair of estate” whensoever he is present (*b*). If represented by commission, either to begin or hold the Parliament, the commissioners (after the commission is read) sit on the right side of the chair of state beneath the steps.

The statute directing “that the King’s chief secretary,
 “ being of the degree of a baron, shall sit above all barons

(*a*) Hakewill, 80.

(*b*) Elsynge’s Manner of holding Parliaments in England, 111.

“not having any of the offices above-mentioned,” doubts have been entertained whether it would apply where the King’s chief secretary is an earl, to give him place above all earls; for this reason, that a statute must be expounded strictly according to the words. And (3 and 4 Jac.) the Earl of Salisbury, being principal secretary, rightly sat on the earl’s bench in his due place according to his creation.

The earls sit on the first form of the left hand of the chair of state, and on the first form of the clerk’s woollsacks, sit the viscounts. The barons sit on the second form on the left hand of the chair of state, and upon divers other forms across the lower end of the House.

The Lord Chancellor, or the Lord Keeper, when the King is present, stands behind the cloth of state on the right hand; but when the King is not present, then his lordship sits on the woolsack *thwart* the House, the seal and mace by him. The Lord Treasurer, when the King is present, stands behind the chair of state on the left hand.

The Lord
Chancellor.

The assistants and attendants sit on the outside of the woollsacks.

When the King is present, none of the Lords are covered; and the judges and attendants stand up, until his Majesty wills them to sit down.

When the King is absent, the Lords do reverence to the chair of state, and salute the rest at their entrance into the House, and then take their places.

The Judges sit, but are not covered until the Lord Chancellor signifies the Lords’ pleasure.

The attendants sit, but are never covered (a).

The Lords did ever appear in their robes on the first day of Parliament. The Lords appear in their robes also whenever the King is present, (if their lordships have notice thereof), and when their lordships give judgment; and when the King gives the royal assent to any one bill or

The Lords
robed when.

(a) *Locus et modus sedendi*, Elsynge, 98, 112.

more by his letters patent, or sends to prorogue or dissolve the Parliament, Parliament then being sitting (a).

If a lord of Parliament dies *sedente curia*, or in the interim of a prorogation, and his heir is summoned, he may not appear in his robes, for that ceremony was performed by his father on the first day of the Parliament; only, he delivers his writ to the clerk, who enters it the day of his appearance.

Lords how
speak.

In the House of Commons, members speaking, address the Speaker; in the Upper House, all the Lords are permitted to address each other. The style of address in the Lower House is, "Mr. Speaker," and afterwards "Sir," all observations being directed to the chair: in the House of Peers the lord delivering his sentiments, is permitted to address the House directly, and not mediately, and the style is "My Lords," and "your Lordships." From the full confidence reposed in their lordships' high sense of dignity and propriety, no apprehension is entertained of any heat or indecorum being allowed to enter into any of their expressions. The peers of the realm are supposed incapable of exercising their exalted privileges in a manner to give personal offence. Another reason for this practice has been assigned by an enlightened foreigner, whose opinions in general are entitled to the greatest attention: *Lettres sur l'Angleterre par A. De Staël Holstein*. "*Dans la Chambre haute on adresse la parole à l'assemblée (My Lords), parceque le Chancelier qui la preside étant membre du ministère, et par consequent appelé à prendre une part active aux débats, on ne voit pas en lui un être impartial et pour ainsi dire, abstrait, comme le Speaker de la Chambre des Communs. C'est une distinction pleine de délicatesse.*" (p. 30). At the same time it may be observed, that the following observations of the same intelligent writer, have less of refinement in them, and appear to be juster and better founded. "*Je dois appeler votre attention sur deux*

(a) Elsynge, title, *Appearance*.

*“usages de la Chambre de Communes, frivoles en apparence,
“mais qui n'en sont pas moins de la plus haute importance
“dans la discussion. Le premier est d'adresser la parole au
“president ; au lieu d'adresser à la Chambre, ou à l'orateur,
“auquel, on repond. Le second est de ne jamais designer un
“depute par son nom propre.*

*“Le premier de ces usages est sans doute une fiction, mais
“une fiction reconnue si essentielle au maintien de l'ordre, que
“l'observation en est presque poussée jusqu'à la pedanterie,
“&c. En reflechissant à cette fiction qui paraît bizarre au
“premier coup d'œil, on trouve qu'elle repose sur une observa-
“tion très juste et très fine des lois de notre imagination.
“Chacun n'a qu'à consulter ses propres impressions pour
“reconnaître qu'une interpellation à la seconde personne,
“telle que : ‘vous avez dit,’—vous avez fait,—vos assertions—
“votre conduite—vos projets—met notre amour propre bien
“plus en garde et excite bien plus vivement notre irritabilité,
“qu'une reponse indirecte adressé à un president impartial,
“dont le seul aspect rappelle quelles sont les bornes, dont on ne
“doit pas sortir dans la discussion.*

*“C'est à un principe semblable que se rattache l'autre
“règle,” &c.*

In the House of Lords, the youngest bishop, it is said, reads prayers; or if no bishop be present, any peer in holy orders (a):—then business commences.

The Upper House may proceed to business, if only three Lords be present.

An important particular in which the usage of the two Houses differs, has been already noticed. The Speaker of the House of Commons cannot give his opinion, or argue any question in the House; but the Speaker of the House of Lords, if a lord of Parliament, may.

In the House of Peers, the Lords deliver their votes *seriatim*, beginning with the youngest baron, and they say “content” or “not content.” The Speaker of the House of Lords has no casting vote, but his vote is counted with the rest of the House. In the case of an equality, the non

Lords how
vote.

(a) 73 Lords' J. 568.

contents, or negative voices, have the same effect and operation as if they were in fact a majority. If the vote be given conditionally, the condition is rejected, and the vote made absolute:—As 6 Hen. 6, the vote was “Content, so far forth as it swerves not from the law of God and the church, and imports no deadly sin.” The condition was rejected (*a*).

A lord of Parliament, it has been already seen, may vote by his proxy, which authorizes him to be personally absent. When there is any business requiring a larger attendance than usual, the course is to order the Lords to be summoned; whereupon a notice is sent to each Lord to acquaint him that all the Lords are summoned to attend the service of the House on a particular day.

Call of the
House of
Lords.

On very urgent occasions, the means taken to secure the presence of the Lords, are the same as in the House of Commons. A call of the House is ordered and enforced by fines and imprisonment upon absent Lords.

A peer sitting in judgment, gives his decision not upon oath, but upon his honour (*b*).

House of Com-
mons.

In the House of Commons the Speaker sits in a chair placed somewhat high, to be seen and heard the better of all; the clerk of the House, with his assistants, sits before him in a lower seat.

Members how
sit.

Forty must be
present for the
Speaker to
take the chair.

On the 5th of January, 1640, it was declared as a constant rule of the House of Commons, that Mr. Speaker is not to go to his chair till there be at least forty members in the House. At an earlier period, and when the House consisted of much fewer members than at present, it appears that the House arose without any bill being read, “being not above threescore.” (*c*). When it happens that forty members do not assemble, the Speaker waits till four o’clock, and then adjourns the House without any question, taking the chair for that purpose only. This rule, that forty members should be present, was intended to prevent questions being carried by surprise, and in a thin House.

(*a*) 4 Inst. 35.

(*b*) *Modus tenendi Parl.* Hake-

will, 36.

(*c*) 20th April, 1607.

As it is essential to the fairness of proceeding, the rule has been observed inviolably (a), both as to the number present when the Speaker takes the chair, and as to his quitting it again immediately, if it is after four o'clock. This distinction of not adjourning immediately, if it is before four o'clock, but of waiting, and if members come in so as to make up the number of forty present, proceeding with business; arises from four o'clock being the hour prescribed, before which any members may take the oaths at the table; and therefore, if the Speaker have taken the chair, and a member is introduced before that hour, he may be sworn, though forty members are not present; for a rule laid down by the House of Commons as a regulation to themselves, cannot supersede the directions of an Act of Parliament. But if, whilst any other business is depending, notice is taken that forty members are not present, and it is after four o'clock, the Speaker counts the House, and if forty members are not present, he, by his own authority, immediately, and without a question put, adjourns the House to the next sitting day,* unless the House have previously resolved, "that at their rising they do adjourn to a par-

Reason why no adjournment till four o'clock.

(a) 2 Hats. 167, 168.

* Though it has been very unusual for the House of Commons to sit on Sunday, it has sometimes happened "upon inevitable necessity," and the death of the King; 8th March, 1701, 1st March, 1714, 26th October, 1760.

The old *modus tenendi Parliamentum*, which from being cited by Sir Edward Coke as the highest authority, has come to be since undervalued, says, "*Non debet teneri diebus Dominicis, sed cunctis aliis, illo die excepto et aliis tribus diebus scilicet omnium Sanctorum et Annarum et nat. sanctis Johannis Bapt. potest teneri.*" Accordingly Elsynghe says he can find no Parliament summoned to be held on All Saints Day, All Souls, or St. John Baptist's. Parliaments, however, have been often summoned to be held on the Sunday.

An. 23, E. 1, 30 Sept. *die Dominico, prox. post festum S. Martini in hyeme*, prorogued to be held *die Dominico prox. post fest. beati Andriæ*.

An. 27, E. 1, 6 Feb. *die Dominico*. So 28, 33, 35, E. 1.

An. 1, 2, c. 4, E. 3. An. 20, E. 3, n. 11, *in fine*. On Friday, the Commons delivered in their petitions, which were considered by the Lords upon Saturday, Sunday and Monday, next following, and on that Monday they were answered.

An. 3, E. 6. The Parliament did sit on Christmas day, and read two bills.

Doors not shut while Speaker is counting, and members who come in, counted.

Aliter on a division.

Rule as to forty members being present extends to committees of the whole House.

Speaker or chairman counts as one.

May take the chair on the black rod's knocking; so on return from the Lords.

"ticular day;" a resolution frequently come to, when it is *expected* that from the thinness of the House, they may break up for want of forty members; and in such case the Speaker adjourns to that day. Whilst the Speaker is counting the House, for the purpose of ascertaining whether there are forty members present, it is not necessary to keep the doors shut, as is done upon a division. Upon a division, no members have a right to vote, who were not present when the question was put, and therefore all other members ought to be excluded. But upon notice being taken, that forty members are not present, and the Speaker's telling the House, (the purpose being to prevent any *further* business being done, or question put), if during such telling, members should come in, so as to make up forty present, the business may then proceed.

The rule requiring forty members to be present, has been extended to committees of the whole House; so that it is equally necessary, if forty members be not present, for the chairman immediately to leave the chair, and for the Speaker to resume it. The distinction about the hour, does not hold in committees, because the reason upon which that distinction is founded is not equally applicable. When the Speaker resumes the chair, on the breaking up of a committee, the chairman can make no other report than informing the Speaker of the cause of their dissolution.

The Speaker or chairman of the committee was always considered as one of the forty, as appears from the numbers on the divisions.

The rule has some qualifications. Being established by the House, only as a restraint on their own conduct, it does not extend to prevent the Speaker's taking the chair, on the black rod's knocking at the door, whether with a message from the King, or from commissioners appointed by the King, though fewer than forty members should be present. And it can hardly be supposed that a rule laid down by the House for their own regulation (*a*), to prevent surprise,

can extend to restrain the Speaker from informing the House of the King's pleasure, signified to him in the House of Lords. Accordingly it is considered that the Speaker, on his return from the Lords, should resume the chair, though forty members are not present.

When there is a division in the House, or in a committee of the House, and it appears upon the report of the numbers, that forty members are not present, and the House or the committee are upon this immediately adjourned, there can be no decision upon the question then under consideration, though upon the report of the numbers, the majority should be ten to one. In such cases, therefore, the matter under consideration, continues exactly in the state in which it was before the division, and must be resumed at this period, on some future day.

Division, and not forty present, question continues in same state.

It has already been seen that members neglecting to attend, or departing without license, may be amerced, over and above the loss of their wages (*a*). Committees have been frequently appointed to consider of methods (*b*) to enforce a more early and constant attendance of members (*c*). Resolutions were in consequence reported to the House, and in one instance orders made thereon, but it was soon found necessary to dispense with their observance. Indeed, nothing can correct the evil, but an improved sense in members of the objects for which they were elected and sent to Parliament, and a sincere desire to discharge their duty.

Modes of compelling attendance of members.

When it is observed that members stay in the country, and absent themselves from the business of the House, it may become necessary to order the House to be called over at some distant day, which will enable members to attend from all parts of the kingdom. In former times the Speaker was directed to write circular letters to the sheriffs, to summon the members to attend; copies of which were

Calls of the House of Commons.

(*a*) 18th March, 1580.

(*b*) 10th May, 1744.

(*c*) 4th December, 1761.

always entered on the Journal. It is also not uncommon to order "That no member shall go out of town, without leave of the House, and this to be obtained by motion in the House."

Summons by
serjeant with
the mace.

It is an ordinary proceeding, when the House is going upon very important business, to send the serjeant with the mace into Westminster Hall and the places adjacent, to summon the members to attend the service of the House (a). And this is almost universally done, when the House is to be called over, and was directed to be done previous to considering an election petition.

The first instance that appears in the journals, of the House being called over, is on the 5th November, 1549, when it is ordered, "That the Parliament Roll be called over on Saturday next."

On the 16th May, 1614, occurs the first instance of the serjeant being sent with the mace for the lawyers.

Taking mem-
bers into cus-
tody.

At the time of ordering the call, there is always a resolution come to, "that such members as shall not attend, at the time appointed, be taken into custody;" and although any reasonable excuse for not attending is admitted, and it has not been very frequently necessary to enforce the calls of the House by taking members who do not attend, into the custody of the serjeant, yet some instances have occurred of late years, of the House acting upon the resolution above stated.

Excuses.

Defaults.

It has not been unusual to order more than one call in the same session, and even to carry this order into execution (b).

Absent with
leave.

Members may be absent with leave of the House, on any reasonable grounds;—for ill health; illness in the family; death of a near relation; urgent private business; to go circuits, &c.

Upon calling the House, if the person be present, he riseth up bareheaded and answereth; if absent, he is either excused; (and so entered:—*Licentiatum per speciale servitium*,

(a) 10 Geo. 3, c. 16, s. 4.

(b) 2 Hats. 95, in notis.

excusatur ex gratiâ, or ægrotat) or if none excuse him, he is entered *deficit*: when he will be ordered to attend on a future day.

Members may be appointed by the House to present addresses to the King, or to carry messages to the Lords.

Sent with addresses to the King :

In joint addresses of both Houses, it has sometimes happened that from particular circumstances, of the King's health (*a*), or other causes, it has been more convenient instead of the two Houses going up in a body, that the King should be attended by a committee from each House; and in this case, the Commons appoint double the number of the Lords (*b*), or the address is presented by the Chancellor and the Speaker only (*c*). An address of the House of Commons alone, is presented by the whole House, or by such particular members as are of the privy council (*d*).

Joint addresses.

Messages from the King under the royal sign manual are generally acknowledged by addresses in both Houses, which are presented from the Upper House by the lords with white staves, and from the other House by privy councillors, or by members specially nominated.

Addresses in both Houses.

In the printed proceedings of the session of 1620, is an entry, "That it is an ancient order that we may send no message to the Lords, nor their Lordships to us, but whilst both Houses are sitting, the Speakers of each House being in the chair."

The ancient and accustomed form of sending a message from the Commons to the Lords is by one member, who is, upon motion made and question put, named by the Speaker, and who is the bearer of the message. He must, however, be accompanied by others; since the rule and practice of the Lords is, to receive no message from the Commons, unless *eight* members attend it. For this purpose, when the messenger takes his message from the table, the Speaker always calls aloud to the House, "Gentlemen,

Sent with messages to the Lords.

(*a*) 27 March, 1673.

(*b*) 31 March, 1750.

(*c*) 27 July, 1708.

(*d*) 11 March, 1789.

“attend your messenger.” There is scarcely ever a difference of opinion on the question of who shall be the bearer of a message; as he is usually selected by the Speaker, either for having been the promoter of the bill, or for his known approbation of the subject-matter of the message which he carries (*a*). In bills that have passed the Commons with a general concurrence, and in other messages in which the House wish to have an opportunity of showing their approbation of the measure, it is customary for a great number of members to follow their messenger, and to attend him to the bar of the House of Lords.

Messages from
the Lords.
Answers
thereto.

In like manner the House will, in some cases, send answers to messages from the Lords by messengers of their own. When the Lords send any messages to the Commons, it is always by two messengers. These, in matters of great moment, are two of the judges; at other times, the messengers have been the master of the Rolls or masters in Chancery, and sometimes one master in Chancery and the clerk of the Parliaments. If the message requires an answer, the messengers ought to wait in the lobby to carry it back; which answer, as appears from the precedents, if the Commons immediately agree with the Lords, is delivered to them; but if the Commons differ, or the subject-matter of the message requires further consideration, they are called in again, and told that the House will send an answer by messengers of their own (*b*).

Course on re-
ceiving a mes-
sage from the
Lords.

When the serjeant informs the Speaker, and the Speaker has reported to the House, that there is a message from the Lords, there must be a question for calling in the messengers; the admission of which is so much a matter of course, that on the 15th February, 1743, and 29th October, 1795, they were received in the middle of a debate, the message reported to the Speaker, and an answer thereupon sent to the Lords without any formal adjournment of the debate. In another instance, there being a message from

(*a*) 3 Hats. 28.

(*b*) 3 Hats. 29.

the Lords, a committee of the whole House broke up for the purpose of enabling the House to receive it, and the House immediately again resolved itself into the said committee (a).

If the object of the Lords be to desire the attendance of a member of the House of Commons, that House has always required that the Lords should, in their message, express the cause for which the attendance is required; and even then the House proceed no farther than to give leave for the member to attend, and he is still at liberty to attend or not, as he shall think fit. For the Commons have been always extremely jealous of admitting any proceeding which might seem to allow an authority in the Lords to command the attendance of any of their members for any purpose whatever. Accordingly, the most advised practice has been for the House not to send an answer to the message, (except to say that they will send an answer by messengers of their own) till the member named in it, is present in his place, and then, on his hearing the message read and consenting to comply with it, the House give him permission to go; but still adding, in their answer to the Lords, "that he may attend if he think fit." One object of the jealousy of the House of Commons, and reason which has made them particularly careful that the Lords should express in their message the cause for which the member is desired to attend, has been, that the Lords might not, on any pretence, call a member before them to give an account of either the vote he had given in the House of Commons, or the motives that had inclined him to take a part in any bill or other matter then depending in Parliament. The House ought to be careful to abide by this practice of their predecessors.

Lords desiring attendance of any members, message must express the cause, and attendance voluntary.

When the Lords sit on the trial of a peer on an indictment as a court of criminal judicature, members of the House of Commons are *ordered* to attend to give evidence.

Whenever a member of the House of Commons is put

Message from the King.

(a) 29 Feb. 1788.

under arrest on account of the public service, a verbal message from the King is delivered by a secretary of state, secretary at war, or commissioner of the Admiralty, according to the department in which the proceeding arises: when the House resolves upon an address of thanks to his Majesty "for his tender regard to the privileges of this House." When the object of the Crown is to desire any proceeding on the part of the Commons, (as an augmentation of the army, the payment of the debts of the civil list, &c.) here it is usual to send a written message signed by the King with his own hand; and as soon as the Speaker has read the signature, the House has always paid marked respect to the King's message, by being uncovered while it is reading.

Black rod sent, for the House to attend the King.

When the usher of the black rod comes with a message from the King for the Commons to attend him in the House of Lords, there to receive the King's commands, as soon as the black rod knocks at the door, all other business of what kind soever, must immediately cease, the doors should be opened, and when he has delivered his message, the Speaker and the House ought to go, without debate or delay, to attend the King in the House of Peers (*a*).

Members to withdraw when their conduct is under debate.

No member of the House may be present in the House, when a bill or any other business concerning himself is *debating*; while the bill is but reading or opening, he may.

On questions where interested, members should go forth and not vote.

On the 12th June, 1604, Mr. Seymour, a party in a bill then under consideration, goes forth during the debate, "agreeable with former order and precedent in like cases."

On the 4th February, 1664, a member appearing to be "somewhat" concerned in interest, his voice was disallowed after a division.

This rule was always attended to in questions relative to the seat of a member on the hearing of controverted elections, and has been strictly observed in cases of very great moment. But in matters of lesser importance in which the private interest of the member has been essentially concerned, it has been entirely neglected, contrary not only to the laws

(*a*) 2 Hats. 352.

of decency, but of justice : and it would be for the honour of the House of Commons, if this rule, which 240 years ago was “agreeable with former order and precedent in like cases” (a), was revived and established.

On the 21st October, 1667, a witness at the bar having reflected on a member, and he in his place, having made his defence, withdrew while the matter was in debate.

Accused heard
in their places.

On the 17th January, 1711, in the proceeding against Mr. Walpole, the commissioners' report was read, and a day appointed to consider the report. Before any question was proposed, he was heard, and then expressed a desire to be present at the debate until a question was formed upon the Speaker's paper; and a doubt arising whether he ought to withdraw before a question stated or any debate had of the matter relating to him, the Journals were referred to, and Mr. Walpole withdrew “before any debate had or question proposed.”

On the 5th April, 1715, Sir William Wyndham being called upon to justify some words he had used, and refusing, a question was moved against him, and then he was heard; and being called upon to withdraw, refused, and a question was put for his withdrawing.

The rule to be collected from these cases is, that if the charge against a member be contained in a report, or arise from an examination of witnesses in the House, the member accused, knowing to what points he is to direct his exculpation, is to be heard and to withdraw before any question is moved, as in Mr. Walpole's case; a decision which has been uniformly supported since. But where the question itself is the charge; (for any breach of the orders of the House, or for any matter that has arisen in the debate), there the charge must be stated, that is the question moved, before he withdraws. The member is not to withdraw till he know what will be the substance of the charge against him; and till he has had an opportunity of explaining to the House the motives of his conduct in the matter alleged against him, and then,

At what period
to withdraw.

(a) 2 Hats. 160.

and not till then, he is to withdraw, as in the case of Sir W. Wyndham.

Exclusion of
persons not
members.

By the ancient custom of Parliament, and by orders of both Houses, strangers are not to be admitted, while the Houses are sitting. It is ordered by the Lords, "that no person except lords and peers shall be in any part of their House during the sitting of the House (a)."

In the Commons, on the 31st October, 1705, is an order for the serjeant-at-arms to take strangers into custody that are in the House or gallery whilst the House is sitting; and this order has been repeated since that time, at the beginning of every session. On the 15th November following, this order was extended to committees sitting in the House.

When a member in his place takes notice to the Speaker, of strangers being in the House or gallery, it is the Speaker's duty immediately to order the serjeant to execute the orders of the House, and to clear the House of all but members; and this without permitting any debate or question to be moved upon the execution of the order. It has been often threatened to move the House for a day to consider of this order, in order to explain or rescind it; but it is said to be so absolutely necessary to the carrying on any business in the House that such an order should exist, (though not necessary that it should be carried strictly into execution,) that it is always found upon cool consideration that it cannot admit of any alteration.

Whilst this sessional order remains in force, if any one member insists upon it, the Speaker must enforce the order, and the House must be cleared.

Strangers to
withdraw on
divisions.

Upon divisions of the House, the Speaker orders strangers to withdraw immediately, and the messengers under the orders of the serjeant-at-arms, see, that all strangers are promptly excluded.

Ceremonies :
1, in the
House : obei-
sance to Chair :
prayers ;
admission of
peers :

The ceremonies observed in the House, are, 1st. Obeisance to the chair on entering and leaving. 2ndly. Prayers. 3rdly. The mode of reception of Peers on entering and leaving.

(a) Lords' S. O. No. 130.

On 21st January, 1580, after the speech of Mr. Popham, then chosen Speaker, (in which he advised them to use reverend and discreet speeches, to leave curiosities of form, and speak to the matter, and not to spend too much time in unnecessary motions or superfluous arguments); a motion was made, "That Mr. Speaker and the residue of the House of the better sort of calling, would always, at the rising of the House, depart and go forth in a comely and civil sort for the reverence of the House, in turning about, with a low curtesy, like as they do make at their coming into the House; and not so unseemly and rudely to thrust and throng out as of late time hath been disorderly used."

2. out of the House; attending with addresses; going to church.

When the Speaker is set in his chair, every member is to sit in his place with his head covered: but no member is to come into the House with his head covered (*a*), or with his spurs on (*b*); nor to remove from one place to another with his hat on; nor is he to put on his hat in coming in or removing (*c*) until he be set down in his place. No member in coming into the House, or in removing from his place, is to pass (*d*), between the Speaker and the member then speaking, nor to cross the House or pass from one side to the other.

The deliberations of Parliament are preceded each day with a form of prayer and religious devotions; an entry of which solemn rite is regularly made in the Journals. This has been the established practice from the beginning of the reign of James 1 (*e*). The only difference is, that the prayers were formerly said by one of the clerks, and are now read by the Speaker's chaplain (*f*).

Prayers.

From the earliest account of Peers being admitted into the House of Commons, the mode of receiving them, seems to have been very much the same as it is at present: that is, that they were attended from the door by the serjeant with the mace, making three obeisances to the House; that they had a chair set for them within the bar, on the

Admission of peers to be heard in House of Commons.

(*a*) Scobel, 6.

(*b*) D'Ew. 550.

(*c*) Id.

(*d*) Lex. Parl. 278.

(*e*) 30 May, 1604.

(*f*) Com. Dig. Parliament, E. 2

left hand as they enter, in which they sat down, covered ; and if they had anything to deliver to the House, they stood up and spoke uncovered, the serjeant standing by them all the time with the mace. After that, they withdrew, making the same obeisances to the House, and the serjeant with the mace accompanying them to the door. The difference between the reception of peers and of judges has been, that the Speaker informs the peer that there is a chair for his lordship to repose himself ‘in ;’ to the judge, the Speaker says, that there is a chair for him to repose himself ‘upon ;’ *i. e.* as explained by the usage, for the person to rest with his hand on the back of it.

“ On the 12th of November, 1690, Lord Torrington, then “ in custody of the marshal of the Admiralty, was admitted at “ his own request to be heard, the mace laid upon the table.” If the mace, it may be observed, had not been upon the table, no member could have spoken, or even have suggested any question to the chair ; nor could the prisoner have asked any questions. When the mace lies *upon* the table, it is a House ; when *under*, it is a committee. When the mace is *out of* the House, no business can be done. When *from* the table, and upon the serjeant’s shoulder at the bar, the Speaker only and *per se*, manages, and no motion can be made. But if a witness be at the bar, and the mace upon the table, then any member may propose any question to the Speaker to ask the witnesses.

Rule as to the mace.

When the Lord Chancellor goes before a committee of the House of Commons, he wears his robes and is attended by his mace-bearer and purse-bearer. Being seated, he puts on his hat, to assert the dignity of the Upper House, and then having uncovered, gives his evidence.

The Lord Chancellor before a committee.

In the House of Lords, sitting as a Court of Error, the Lord Chancellor sits covered during the time the peers are in Court, except at their entrance and departure, when he * rises and bows to them (*a*).

In the House of Lords.

(*a*) Lord Campbell’s Lives of the Chancellors, Introduc. chap.

* Lord Campbell gives the following extraordinary and afflicting account of what annually passes in the Court of Chancery : “ When

The ceremonies out of the House are, attending with addresses, going to court and going to church. Going to Court.

The former (going up with addresses) have been already spoken of as regards matter of substance.

The peculiarity in form, is, that when the Chancellor and the Speaker proceed in State to the Royal Palace, at the time appointed, the Lords advance by the ordinary carriage road; the Speaker's state coach and the members' carriages always approach the palace through the central Mall in St. James' Park. The Lords all use court dresses; some of the members of the House of Commons accompany the Speaker in ordinary attire (a).

The old *Modus tenendi Parliamentum*, says that an archbishop or bishop, or some great clerk, discreet and eloquent, chosen by the archbishop in whose province the Parliament is held, ought to preach one of the first five days, (which it then took to assemble the Parliament and convocation, and to read the defaults), and in the presence of the King; and to admonish and exhort the whole Parliament, that they, with him, humbly worship and pray to God for the peace and tranquillity of the King and kingdom. Going to church.

So, upon solemn days, as 30 January, 29 May, 5 November, &c., some divine is desired to preach a sermon before the House (b); but none shall be recommended to preach before the House, unless he be of the dignity of a dean or of a doctor in divinity (c).

The officers of the House of Lords are, a perpetual Chair-

(a) May, p. 267, 268.

(b) 3 January, 1710.

(c) R. 31 Jan. 1699.

"the Lord Mayor of London comes up into the Court of Chancery, on Lord Mayor's day, and by the Recorder invites the Lord Chancellor to dinner at Guildhall, the Lord Chancellor remains covered, and does not return any answer to the invitation." This may be an ancient, but is it a laudable custom; and would it not be more honoured in the breach than the observance? Compare it with Chaucer's account of the courteous demeanour of the olden chivalry; who—

"Ne villainie,
"Ne said, ne did, to any living wight,
"But was a very gentle, parfit knight."

Officers of the
Lords.

man of committees on private bills, a post at present filled by a noble lord of extensive experience and profound practical knowledge of that complicated subject in all its details, viz. Lord Shaftesbury; a clerk of the Parliaments, and two clerks assistants; a reading clerk, and deputy reading clerk; clerks of the journals, engrossments, enrolments, &c.; the usher of the black rod; serjeant-at-arms, &c.

The clerk of the Crown and the clerk of the Parliament sit on the lower woolsack, and have a table before them.

And the clerk of the Parliament hath two clerks under him, "who kneel behind the said woolsack" (a).

'The two principal clerks, who sit among the justices, are not subject to every justice, but are immediately subject to the King and his Parliament in common.'

It is an order of the House of Lords, 6th February, 1723 (b), "That the clerks and inferior officers attending this House, shall not be, at any time, suspended or displaced from their offices or employments without leave of the House."

Officers of the
Commons.

The office of clerk of the House of Commons is an office granted by the King, for life, by letters patent, to be exercised by the clerk himself or deputy, with an ancient salary of £10, payable half-yearly, at the Exchequer. By virtue of his office the clerk has not only the right of appointing a deputy to officiate in his stead, but has the nomination of the clerk assistant, and all other clerks without doors. The duties are comprised in these words of his oath, "to make true entries, remembrances, and journals, of the things done and past in the House of Commons;" but he is to confine himself to taking notes of the orders and proceedings in the House. These, he and his clerk assistant enter in their minute books at the table, and from these minutes, the votes, which are ordered to be printed, are made up under the direction of the Speaker. At the end of the session, it is the clerk's office to see that the Journal of the

(a) Elsynge, 112. *Locus et* (b) Hakewill, 15.
modus sedendi.

session is properly made out, and fairly transcribed from the minute books, the printed votes, and the original papers that have been laid before the House. It is his duty also to sign the bills which have passed the House, all addresses to the Crown, and all orders of the House, and to read whatever is required to be read in the House.

It is also his duty to take down the words of a member, to which an exception is taken as irregular, on receiving the direction of the House to that effect, conveyed, it should seem, by the mouth of the House, the Speaker. But if any member has spoken between, (as where a seconder had spoken (a) two or three sentences and then sat down), no words which have passed before, can be taken notice of, so as to be written down in order to a censure.

In a committee of the whole House, the clerk assistant officiates alone.

The clerk of the Crown is an office of the House of Commons, and "his place is upon the steps at the Speaker's feet; where he may sit and be present at debates."

Clerk of the Crown.

The serjeant-at-arms is also an important servant of the House. His salary is regulated by the statutes 39 and 40 Geo. 3, c. 92, and 52 Geo. 3, c. 11. His duties are numerous and important, and he has the supervision of various officers in his department. For the better execution of his duties, he has a chair close to the bar of the House, and is assisted by a deputy serjeant.

The serjeant-at-arms.

The manner of members speaking and voting in the House of Commons, may be examined under the three heads, of motions, debates, and divisions.

Members how speak.

Any member may make a motion, but in order to give the House due notice of his intention, he is required to state the form of his motion on a previous day, and to have it entered in the order book, or notice paper. In the House of Lords, there is no great strictness in regard to notices, but the pressure of business in the House of Commons has rendered it necessary to set apart certain days for

Notice of motion.

(a) 1694.

particular business; for orders of the day and for motions. Notices of unimportant motions are often given the day before they are intended to be brought forward; and unopposed motions can be brought on, without any previous notice; but that is only by consent of the House, and if objected to, the motions cannot be persevered in.

Motions, place
of making :

All motions should be made by a member in his place, except where the practice of the House has established, for purposes of convenience, a different course. A petition is presented by a member in his place; so a motion bringing forward new matter, of which the House was not before in possession, is made by the member *in his place*: while the ulterior proceedings, as the first and second readings of bills, the consideration of reports, &c. are brought forward by motion *at the table*. Again, where acts are done out of the House, a member presents the results *at the bar*.

Time for
making :

After the place, in which motions are made, the next subject of inquiry is the time for making them. And antiently, (on the 25th of November, 1695,) it was ordered that no new motion be made after one o'clock.

Leave to make.

On the 4th of February, 1702, leave was given to make a motion, it being after the time of day for that purpose.

Rules as to
motions.

The principle of this rule, is to prevent a motion of importance being made after the House have proceeded on the particular business which has been appointed for that day, and where such motion may be a surprise on many members who have left the House. Formerly this leave was necessary, if it was after the time fixed by the order of the 25th of November, 1695, without any consideration had of the orders of the day; but in later times, the having proceeded upon the orders of the day, has been the circumstance which has been considered to make it necessary to have the leave of the House to introduce any new motion, without previous notice. Four o'clock is now considered as the hour for proceeding on public business.

Orders, on
what days have
precedence.

It has now been for many years a sessional resolution that all orders of the day, set down in the order book for Mondays, Wednesdays, and Fridays, shall be disposed of

before the House will proceed upon any motions of which notice shall be entered in the order book.

This doctrine does not extend to motions for new writs, or on matters of privilege; the House is at all times ready to admit those, and no leave is necessary. And it is also usual to give precedence, as a matter of courtesy, to a motion for a vote of thanks.

As notices of motions are thus restricted to two days in a week, attempts have been sometimes made, to bring forward a substantial motion in the shape of an amendment, on reading the orders of the day. This scheme is defeated by a sessional resolution: "That upon days appropriated to orders, and a question put from the chair, that any order of the day be read, no amendment shall be proposed, except that the other orders of the day, or that any order set down for the same day, be now read: but that this resolution shall not apply to any case of a committee of supply, or of a committee of ways and means."

Motions two days a week,

In the Upper House any Lord may propose a question without a seconder. In the Commons, the mover generally makes a speech on the subject, and concludes by a formal motion which must be seconded by another member, otherwise the question is dropped, and no entry is made of it in the votes. When a motion is seconded, the question is then proposed by the Speaker to the House, and is read by him.

Must be seconded in Commons, not in Lords,

Question put.

It is often said, that in a committee of the whole House there is no necessity for a motion to be seconded. Hatsell says, that he does not know on what authority the assertion is made, nor that it is justified by practice.

On the 28th of June, 1604, a member interposed a motion before a former question was disposed of; and this was held to be irregular. The general rule is, that the question which is first moved and seconded, is to be first put. It was the ancient practice for the Speaker to collect the sense of the House from the debate, and from thence to form a question on which to take the opinion of the House; but this has been long discontinued. And at present the usual

When House in possession of question.

Not withdrawn
without leave.

course is for the member who moves a question to put it into writing, and deliver it to the Speaker; who, when it has been seconded, proposes it to the House, and then the House is said to be in possession of the question. And the question cannot, after it is proposed from the chair, be withdrawn, but by leave of the House. The Speaker must read this to the House, as often as any member desires it for his information.

Questions how
evaded.

But as it frequently happens that questions are moved upon which the House do not wish to give any opinion, they avoid it by moving either to adjourn, or for the orders of the day, or for the previous question, or by making such perverse amendments to the question, as change the nature of it, and make it inadmissible even by those who first proposed it (*a*).

Motion to
adjourn.

On the 22nd April, 1712, a motion "to adjourn" was made and put (*b*), in the midst of a debate on another question. A question for the House to adjourn, takes place of any motion before made or question proposed, although the same has been ever so long in debate; and is a method the House has used, to put an end (at least for that day) to a matter which they do not think proper to determine by a question upon the matter itself (*c*).

When
repeated
same day.

To supersede a question already proposed, the motion must be simply, *That this House do now adjourn*, without the addition of any specific day: nor can it be amended by adding a particular day. But if the motion to adjourn, is not made in the midst of any other proceedings of the House, and with a view to supersede the question already proposed, then it may, like every other question, admit of an amendment, by adding a particular day. Some intermediate question having been proposed, the question of adjournment may be moved repeatedly on the same day.

If the motion to adjourn is carried in the affirmative, the House is adjourned to the next sitting day, unless the House have come to a previous resolution that at its rising

(*a*) Hats. 106.

1692.

(*b*) House of Lords, 13 Jan.

(*c*) 10 March, 1757.

they will adjourn to a particular day. When the motion to adjourn is carried, the original motion is never printed in the votes.

On the 1st April, 1747, a motion was made and question put, "for reading the orders of the day" after another question had been made and proposed. This is the first instance of this proceeding being adopted for the purpose of avoiding a question already proposed to the House. This motion can only be made on a day on which motions have precedence. For the right of making a motion for the orders of the day to be read in the midst of another proceeding, does not hold, where the House are actually proceeding upon one of the orders, and doing that which the motion, if carried, would oblige them to do. It is only admitted to supersede a question upon any other matter not properly the business of the day. And the motion must be,—“that the orders of the day be now read,” generally, and not for any particular order; and if this is carried, the orders must be read and proceeded on in the course in which they stand. But a motion to adjourn will even supersede this motion for the orders of the day. If the question for the orders of the day be carried, the original question does not appear upon the votes. It is different if the previous question be moved; then the first question must be stated in the votes, in order to introduce and make intelligible the second question upon which the sense of the House is taken.

Motion for the order of the day.

The previous (in fact the second) question, is a contrivance to prevent the Speaker from putting the main question. It intercepts the consideration of the main question, and says, "Let us first consider whether the question shall be disposed of now, or at a future time?" Shall it be now put? If it be resolved in the negative, it prevents the Speaker from putting the main question as usual.

For the previous question.

The effect of the previous question is only to put off the coming to the question at that time. It in fact is in these words, "That this question be *now* put." It is a mistake to

Previous
question.

ascribe its discovery to Sir Henry Vane, and to say (a), "This previous question like its inventor, is a perpetual disturbance." The first instance of its use was the 25th May, 1604. It is true that it has always been the mean of preventing the consideration of the question. But the effect of the previous question being only to postpone the consideration of the question at that time, the same question may, it unquestionably follows, be unexceptionably moved on another day.

It seems that a previous question cannot be put upon an amendment. If the previous question be negatived, so as to put off the main question to another day, the same question, though altered in words, if not essentially and substantially altered in matter, ought not to be again, put that day. It is a rule, (of which the reason is not apparent,) that in a committee of the House there can be no previous question. If, therefore, it is wished to avoid a question there, for the time being, it is usual to move that the chairman do leave the chair, which has the effect of a motion to adjourn, and takes place of every other motion, and, when carried, is often attended with much inconvenience. It is very ingeniously suggested by the youthful barrister, whose useful assistance I have in the revision of this work, that a committee, being a body to which a certain question is referred for consideration; to move the previous question there would, in effect be, to consider whether they should perform their duty?

It seems to be the prevailing opinion, (though doubts have existed upon the subject,) that, after the previous question has been proposed from the chair, amendments cannot be admitted to be made to the main question; but that it is necessary to withdraw the previous question before any amendments to the first question can be proposed. If, before the previous question is proposed from the chair, though it should have been moved and seconded, any member should offer an amendment to the main question, it would then be received, and the Speaker would give priority to the motion for amending.

(a) Grey's Debates, 2, 113.

If the previous question have been moved and seconded, it is first put. If it be carried in the affirmative, no alteration can then take place—no debate is suffered to intervene—the Speaker must put the main question immediately, and in its present form, no words being added to or taken from it (*a*); as the House have resolved that the question shall be “now put.”

The other mode of avoiding a question is to alter it by amendments, till it bears a sense different from what was intended by the proposers. This, perhaps, is not quite fair, but it has been often done. In this mode of avoiding a question, the amendments are not printed in the votes separately from the question, but only the final vote.

Altering the question by amendments.

This topic suggests the consideration of amendments generally, and furnishes a favourable opportunity for the introduction of that topic.

Amendments generally, how made.

In the House of Commons, every amendment must be proposed and seconded in the same manner as an original motion. If no seconder be found, the amendment is not proposed by the Speaker, but drops as a matter of course, and no entry of it appears in the votes.

An amendment is made to a question, after it has been proposed by the Speaker, and before it has been put; and by the following modes:—

1. *By leaving out certain words;*

For the sake of illustration, the question may be supposed to be, “That this bill be on Monday next read a second time.” Since which, it has been proposed to leave out the words, “on Monday next.” The sense of the House is taken upon this alteration. The Speaker puts the question, “that the words proposed to be left out, do stand part of the question.” If that be resolved in the affirmative; it shews that the House prefer the original question to the amendment; and the question as first proposed, is put by the Speaker.

But the mover of the amendment, most probably, wishes to bring about some alteration in the motion, which will

(*a*) Lex Parl. 292. 2 Hats. 115.

enable him to vote in favour of the question: and this he seeks to attain by proposing to

2ndly. "*Leave out a certain word or words, in order to insert or add others.*"

Amendments.

Thus, his amendment may be, to leave out the words, "on Monday next," and add "this day month." But there may be other members who are altogether hostile to the proposition, and such will vote against the words proposed to be substituted, and will propose an amendment to them, by leaving out this day month, and adding "this day six months."

The more simple mode of amending a question is by merely

3rdly. *Inserting or adding certain words*;—

As if the question be, "that this bill be read a second time:" Amendment, "that the words this day six months be added, after the words a second time." The question so amended is put, and if it be carried, the words are added. If, on the contrary, the amendment is negatived, the question is put, as it originally stood.

Several amendments may be moved to the same question, but subject to the following regulations:—

It is an established rule of the House, that when you have amended the latter part of a question, you cannot recur back and make any alteration in the former part; which sage regulation must be sometimes productive of considerable inconvenience. Yet, Hatsell says, it has been always strictly observed; and it seems that amendments positively must be made in the order in which they would stand in the amended question.

When it has been agreed that certain words, shall stand part of a question, it is deemed irregular to propose an amendment to those words: but this rule, it seems, would not exclude an addition to them. In like manner when the House have agreed to add, or to insert, words, those words cannot be the subject of future amendments.

It is a commonly received opinion out of doors, in the conduct of public assemblies, that there cannot be amendments to amendments: but the practice nevertheless, con-

stantly obtains in Parliament, when the original amendment is to leave out, or to insert or add certain words. The questions put by the Speaker in such cases, deal with the first amendment, as if it were a distinct and substantive question, and with the second, as if it were an ordinary amendment. And when a member desires to move an amendment to a part of the question proposed to be omitted by another amendment, or to alter words proposed to be inserted, it is sometimes arranged, that only the first part of the original amendment shall be formally proposed, so as not to preclude the consideration of the second amendment.

When the question for adopting an amendment, is put forward apart from the original question, separately and distinctly, no confusion arises from moving an amendment to it, before its ultimate adoption is proposed. But no motion to amend a proposed amendment can be entertained, until the amendment has, for the time, assumed the place of the original question, and become, as it were, a substantive question itself (*a*).

When a question is complicated,—that is, consists of two or more propositions, it was formerly contended, that it was the right of a member to have it divided, in order that he might give his opinion upon each proposition separately. And, perhaps, when the question was formed by the Speaker from the debate, and not moved by a member, it was a proper objection to the manner in which the Speaker was stating a question, that it was complicated; and to desire that he would separate it. But when a question is moved and seconded, and proposed from the chair, however complicated it may be, the only mode of separating it, is by moving amendments to it, which must be decided by the House upon a question. But a question there is no doubt, may be divided by order of the House, or by its consent (*b*).

Moving to separate a complicated question.

Any member may call for the execution of a subsisting order of the House. In this case, the member does not properly make any motion, but only takes notice that the

Calling for enforcement of an order.

(*a*) May, 280.

2 Jan. 1775; 25 Jan. 1771; 9

(*b*) 2 Dec. 1640; 19 Feb. 1770; April, 1772; 21 May, 1773.

Sense of House
taken.

Matters of pri-
vilege and mo-
tions of order
have priority.

Debates.

Rules as to
members
speaking.

Cannot speak
twice :
except to
explain.

orders of the House are disobeyed. But in cases where there is no standing order or resolution of the House, if a member proposes any thing, the only method of determining whether any thing shall or shall not be done, or how it shall be done, must be by moving a question to the House ; that question to be seconded, and proposed from the chair ; and the sense of the House taken upon it.

Although a question have been moved and seconded, and proposed from the chair, yet if any matter of privilege arise, either out of the question, or from any quarrel between members, or any other cause, this will supersede the consideration of the original question, and must be first disposed of. So, if any question of order arise, this must necessarily be first decided. Or, if it be desired to have an act of Parliament, or extract from the Journal, or any paper before the House, read, and the House acquiesce, this may be read. If, however, any person should object to the reading these papers, a question whether or no such acts or papers shall be read, must be stated and decided upon by the House.

It is essential to the dispatch of business, that the rule and order of the House of Commons, "That no member "shall speak twice to the same question;" and the (a) ancient order of the House of Lords, "That no man is to "speak twice to a bill at one time of reading it, or to any "other proposition, unless it be to explain himself in some "material point of his speech, but no new matter; and "that not without the leave of the House first obtained," should be strictly adhered to. And it is the duty of the Speaker to maintain the observance of this rule without waiting for the interposition of the House; which Hatsell observes, in calling to order, never produces any thing but disorder. "So good order," it was formerly said, "is used "in the House; that he that intends to speak, stands up "bareheaded, (for no more than one speaks at a time,) "speaking to the Speaker, not one to another, (being against "the rule of the House;) and he that speaketh, is to speak "no more that day to the bill he hath spoken to, to avoid

(a) Read 9 May, 1626.

“ spinning needlessly out of time ; and their speeches must
“ be free from taunts of their fellow-members that are of
“ contrary opinion.” (a)

Notwithstanding all the care possible, it will happen, that under pretence “ of informing the House of a fact,” or of “ explaining, where he has been misunderstood,” a member will break this order and speak twice ; and this entitles others to the same indulgence. It is with a view to allow more ample and frequent discussion than these orders will admit, that committees are appointed, where every member may speak as often as he pleases.

And if a new motion be made, pending the former motion, as “ to adjourn,” or “ by way of amendment,” or “ for the previous question,” this entitles every member to speak again to that question, if he be not restrained by modesty and a sense of propriety from obtruding himself repeatedly upon the House. The strict observance of the rule must, therefore, after all, very much depend upon the good sense and delicacy of feeling, of the members themselves.

May in committee :
or on a new motion.

In the House of Lords, the Lord Chancellor does not call upon the person who is to speak. When two peers rise together, unless one give way, the House call upon one to speak ; and if neither yields, it is only by a division that it can be settled who “ shall now be heard.”

Lord Chancellor does not name the Speaker.

In the Commons, the Speaker names the member who first rises to speak to a question.

The Speaker’s first calling upon any member does not entitle that member to speak first, if another were up before him. But where two members rise nearly at the same time, it is customary and advisable, for the sake of order, to submit to the Speaker’s decision which was up first. If the House see, from repeated instances, that the Speaker’s behaviour, in calling upon members to speak, is partial, and that he abuses the trust reposed in him, they have the remedy in their hands, by putting the question of “ which member rose first ?” for the House need not acquiesce in the

Speaker calls on member by name.

Where two rise together.

(a) Hakewill’s Manner of holding Parliaments in England, 37.

Manner of
speaking.

Speaker's decision; and the person who really rose first, may not have first caught the Speaker's eye.

When a member speaks, he is to stand up in his place uncovered, to mark his respect for the House; and to address himself to the chair, and not to any particular member. If he be on the lower seat, he must have one foot within the floor. Members have, in a few instances, been allowed, in both Houses of Parliament, to speak sitting, on account of indisposition. This is done on the suggestion of a member, and with the acquiescence of the House. During a division also, with closed doors, members speak sitting and uncovered (*a*).

When a member speaks beside the question, (as "*de merâ fide et solâ fide*"); it is the duty of the Speaker to interrupt him; and the House ought, for their own sake, to support the Speaker in such interposition. Every member is entitled to be heard quietly and without interruption. But upon the question under discussion, or an amendment proposed to it, or a point of order, cries of "Question" are often repeated, when the topics *are* relevant, and the speaker perfectly in order; but the House is in truth impatient for a division, or tired of a debate; when if a member finds that it is not the inclination of the House to hear him, and that they endeavour by any means to drown his voice, it is his most prudent course to submit to the pleasure of the House, and to sit down. A member may speak from the gallery, but he must have a seat, and not speak in the passage-way, or from behind the clock.

Time for
speaking.

The proper time for speaking is, after a question proposed by the Speaker, and before it has been put. But from diffidence in himself, or the expectation that others are about to speak, a member sometimes permits the Speaker to put the question before he rises in his place.

Members rising
to speak after
question put.

Again, a member has sometimes risen and offered to speak before the Speaker has put the question (*b*), but the Speaker not seeing him, has proceeded to put it both in the

(*a*) Scobell, 52.

(*b*) 17 May, 1606; 27 Jan. 1789.

affirmative and the negative. The order of the House appears to be, that any member may speak after the question put and voice given in the affirmative, "because no full question without the voice negative;" but not after the voice given in the negative (a); for he has then lost his opportunity.

So it is a Standing Order of the Lords, that "when a question hath been entirely put by the Speaker, no lord is to speak against the question before voting."

No member may speak except when there is a question before the House, or such member is about to conclude with a motion or adjournment. But a member may ask a question concerning a public event of the Ministers of the Crown or relating to any measure pending in Parliament of particular members who have charge of a bill or motion.

Must be a question before the House.

What questions may be asked.

So, where a member claims indulgence to enable him to give personal explanations of his words or conduct, he is generally allowed to proceed without interruption.

Indulgence to give explanations.

On the 19th April, 1604, agreed for a rule of the House, "*Qui digreditur à materia ad personam*," the Speaker ought to suppress. The aggressor, the party who first introduces personalities, should be silenced. The accused must be heard to defend himself.

Personal or disorderly expressions suppressed.

On the 22nd January, 1693, to the end that all the debates in this House should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented:—"Be it ordered and declared, that no member of this House do presume to make any noise or disturbance whilst any member shall be orderly debating, or whilst any bill, order, or other matter, shall be in reading or opening: and in case of such noise or disturbance, that the Speaker do call upon the member 'by name,' making such disturbance, and that every such person shall incur the displeasure and censure of the House."

Disorderly members named.

When, in obedience to this order, the Speaker calls

(a) 13 June, 1604.

upon a member by name, the member is immediately directed to withdraw. He is first heard, if he should wish it, and then withdraws. The Speaker will then state to the House the offence committed; and the House will consider what punishment they ought to inflict upon the offender.

In addition to speaking "twice or oftener," in the same debate;—"beside the question;"—or against "particular members," it is considered disorderly to reflect upon the proceedings of the House; and the ancient practice, it is said, was, that no man had a right to speak against any determination of the House, unless he meant to conclude with a motion for rescinding such determination.

Use of King's
name dis-
orderly.

Allusions to
other House
disorderly.

It is highly disorderly to use the King's name to influence a debate, or to speak of the King irreverently.

Allusions to debates in the other House are out of order.

Walking up and down the House; standing on the floor, in the passages, or in the gallery; taking books and papers from the table, or writing there to the interruption of the clerks, are instances of disregard of rules: Crossing between the chair and a member that is speaking, or between the chair and the table, or between the chair and the mace, when the mace is taken off the table by the serjeant, are disorderly proceedings.

Exceptions to
expressions
should be
taken the same
day.

If, in the debate, words are let fall that give offence, exceptions should be taken the same day, and before the member using the expressions goes out of the House; or he who is offended, may move that such person may not go out of the House till he hath given satisfaction in what was by him spoken. The latter rule is as absurd and impracticable as the former is judicious and proper. After the debate is over, the words must be repeated by the person excepting to them, and in case the member using them desire it, or the House command him, he is to explain himself standing in his place; which, if he refuse to do, or the House be not satisfied with his explanation, then he is to withdraw (*a*).

(*a*) Scobell, 81.

When words of heat or contumely, escape any member, the Speaker ought not to permit them to pass unnoticed. When the Speaker observes upon any expression as personal and disorderly, or capable of being applied offensively to any other member, and this appears to be the general sense of the House, the member offending ought immediately to make an apology, and to ask pardon of the House for this breach of their order, in as large and general terms as possible, so as in such apology, to comprehend the person of whom the words were used. When it is necessary, the House will require, if members have deviated into warm and personal altercation, assurances not to proceed further in the business.

Words of heat.

Assurance not to proceed further.

In a debate on the 29th of March, 1677, Sir Thomas Moles says, "By our long sitting together we lose, by our familiarity and acquaintance, the decencies of the House." An intelligent foreigner, endued with a penetrating spirit, has lately observed, "*Au milieu de cette absence de gêne, des certains egards de politesse Parliamentaire ne cessent pas d'être rigoureusement observés, et il n'y a point de rapproche auquel on soit plus sensible qu'à celui de s'être permis une expression ou un procédé, contraire aux usages de la chambre. C'est ainsi que dans maint salons, bien des gens aimeraient mieux être accusé d'avoir manqué à la morale, qu'à l'usage du monde*" (a).

It has been observed, that nothing tends more to throw power into the hands of the ministry, and of those who act with the majority, than a neglect of, or departure from, the rules of the House. The forms of proceeding have been, in many instances, a shelter and protection for the minority.

A reply is only allowed to a member who has proposed a distinct question to the House; not to a mover of an order of the day, (as that a bill be read a second time); nor to the mover of an amendment. Hence a member often

Reply.

(a) Lettres sur L'Angleterre par A. de Staël Holstein, 255.

Adjournment
of debate to
later hour.

Votes, manner
of taking in
both Houses.

moves an order or seconds a motion without a remark, and speaks at a later period of the debate.

A debate may be adjourned to a later hour of the same day.

It remains to notice the manner of taking the votes in both Houses.

In the Lords, when the question has been put by the Lord Chancellor, the lords are to keep their places, and every lord, beginning with the lowest, rises in his turn and exclaims content, or not content, according to his opinion. And lords vote for those whose proxies they hold; but a peer's own vote and those which he gives for absentees need not agree. The Commons give their votes in person by ayes and noes.

The act of the majority binds the whole * and this majority is declared by votes openly and publicly given. Members who are not present when the question is put, cannot vote in either House.

In the Lords.

A division is effected in the Lords by the non-contents remaining within the bar, and the contents going below the bar. A teller is appointed for each; by whom they are respectively counted. When the lords have been told, and have resumed their places, the clerk at the table calls over the names of the lords who hold proxies, who rising uncovered in their places, say content or not content for their "proxies," or those they represent.

In Commons
Speaker de-
clares by
sounds of
voices who
have it, Ayes
or Noes.

In the Commons, the opinion of members is to be collected from their voices in the House. If it cannot be determined by the sound of the voices which party is the majority, the Speaker often puts the question a second time, before he gives his opinion. After the Speaker has declared who in his judgment have it, the Ayes or the Noes, any member is at liberty to contradict him, until some member comes into the House. After a member has come in, it is too late. The old rule and practice, it is said,

* The law *majoris partis*, is so in all councils, elections, &c., both by the rules of the Common Law and the Civil.

were, that the House should be divided only when the Speaker's determination upon the voice was wrong or doubtful. When a division is demanded, by a resolution of the House of 24th March, 1603, it belongs to the Speaker's place to appoint tellers, two of either part indifferently.

If demanded, division.

Tellers, how appointed.

Before the House proceed to a division, either in the House, or a committee of the whole House; indeed before the question is put upon which it is probable there may be a division, the Speaker, or chairman, should take care that all strangers are withdrawn (*a*). If this is omitted, it is impossible to avoid great irregularity and confusion, for while strangers are going out, members will come in and be told in division, though not present at putting the question; and this can only be prevented by obliging strangers to withdraw, and shutting the doors before the question is put. The question, indeed, is often twice put, as fresh members have come in from different rooms on the ringing of the division bell. It is part of the duty of the tellers to direct the shutting of the doors, that no unfair advantage may be taken, or blame laid upon the serjeant, for having shut them too soon, or kept them open longer than is necessary.

Strangers must withdraw.

Doors be shut.

As no member ought to be told in a division, who was not in the House when the question is put, so all members who were in the House must be told on one side or the other, and cannot be suffered to withdraw. In the Upper House, lords who desire to avoid voting, withdraw to the woollsacks, where they are not within the House. In the Commons, it often happens that members not wishing to vote upon particular questions withdraw into Solomon's Porch, or the Speaker's room beyond it; but these being still considered as part of the House, (since there is no avenue to them but through the House), if any members insist on it, those members must return into the body of the House, and must be told. If they were not in the House, or gallery, when the question was put, but were absent in Solomon's Porch, or the little chamber, and consequently

Telling.

(*a*) 2 Hats. 186.

did not hear the question put, they had, in the old House, a right to demand of the Speaker, "what is the question;" and to stay in or go out of the House even though the door should be then shut; and would probably be still allowed to vote according to their inclinations.

At the date of the first edition of this Treatise, the practice, to which parts of the preceding statements and observations applied, was for one party to remain in the House, the other going forth into the lobby. But in 1836, it was thought advisable to adopt some mode of recording the names of members who voted. By the plan adopted, there are now two lobbies; one party is sent into each of these lobbies, and the House is so cleared. Two clerks, stationed at each of the entrances, holding lists of the members on large sheets in their hands, place a mark against their names, and the tellers count the numbers. This contrivance is found successful, and the division lists are remarkable for their accuracy.

Where only
one member
on one side.

It has sometimes happened that a division has been demanded, and it has been found that there is but one member on one side of the question, and consequently not enough to appoint two tellers. In this case, the division cannot go on, but the Speaker declares on the other side. If there are two tellers, the division must go on and be reported, though on one side the return of the members should be "none."

If tellers differ.

If any difficulty arises upon telling in the members, or the tellers should disagree upon their numbers, it does not appear how this can be decided but by another division, as has been done where a stranger was told in as a member (a). But to avoid such occurrences, the serjeant and door-keeper should not open the doors of the lobby or gallery till the numbers are reported and declared. When the House has been told, and the tellers are agreed about the numbers, the usual manner of reporting the numbers to the House, is for those tellers who have told on the part of

Report.

the majority to take the right-hand in coming up to the table, and they all make three obeisances to the chair as they come from the bar. But if the numbers are equal, the tellers are mixed alternately.

The perplexing questions, which side ought to go forth upon a division in the House of Commons, are thus got rid of.

Which side went forth.

On a division in a committee of the whole House, the Ayes go on one side the House, and the Noes on the other; and the numbers are in this manner ascertained, unless five members require that the names shall be noted in the usual manner, in which case no difference exists in the mode of taking divisions in committee and in the House.

Divisions in committees of the House.

Where a member appeared to be "somewhat" concerned in interest, his voice has been disallowed after a division (*a*).

Disallowance of votes.

When a member was not in the House when a question was put, but only in the lobby, his voice was disallowed (*b*).

It has been already stated that the Speaker has a casting vote, in case the numbers upon a division should be equal. And it is the same with the chairmen of committees. In the Lords, in case of an equality of voices and proxies combined, the non-contents have it. But when the House is sitting judicially, as the question is then put for reversing and not for affirming, if the members be equal, the judgment of the Court below is affirmed. In the House of Commons, the Speaker or chairman of a committee, when he gives a casting vote on the numbers being equal, generally votes in such a manner as will not make the decision final, but will leave an opportunity for a further consideration of the measure.

In case of equality casting vote.

It is now proper to notice briefly the proceedings which take place between the Lords and the Commons, when the rights and privileges of either House are concerned. For neither House of Parliament can take upon themselves to redress any injury, or punish any breach of privilege offered to them by any member of the other House. The leading

Proceedings between the Lords and Commons, where the rights and privileges of either are concerned.

(*a*) 4th February, 1664.

(*b*) 18th May, 1663.

Member of one
not punishable
by the other.

Words spoken
by member of
one House,
reflecting on
other or its
members.

principle which appears to pervade all the proceedings between the two Houses of Parliament, is, that there shall subsist a perfect equality with respect to each other, and that they shall be, in every respect, totally independent one of the other. Hence it is that neither House can claim, much less exercise, any authority over a member of the other; but if there be any ground of complaint against an act of the House itself, against any individual member, or against any of the officers of either House, the complaint ought to be made to that House of Parliament, where the offence is charged to be committed; and the nature or mode of redress or punishment, if punishment is necessary, must be determined upon and inflicted by them. In case of a breach of their privileges by a member of the other House, the mode of proceeding is, to examine into the fact, and then to lay a statement of the evidence before that House, of which the person complained of is a member.

Where the cause of complaint is words spoken by a member of either House, reflecting upon the other House, or any of its members, it appears from the several instances how extremely difficult it is to obtain any redress.

The impossibility of obtaining exactly the expressions objected to, and the different meanings which may be affixed to the same set of words according to the tone and manner of the person speaking, have, in the instances referred to, rendered all their applications for redress without effect. But there is still something further which makes the proceedings upon these occasions very delicate. If disorderly proceedings are used in either House of Parliament, and are not taken notice of at the time, and objected to by the House in which they are delivered, the practice of the House of Commons is, that they cannot afterwards be called in question even by the House itself; how much more difficult then, is it for the other House, who can have no information of these words but from report, so to ascertain the form of the expressions, and the meaning and intention of them, so as to be able to fix upon them the charge of disorder and irregularity, and thereby

to entitle themselves to claim redress from the House in which they were spoken, or to desire such punishments may be inflicted, as the party offending may be thought to deserve.

Where persons are already in custody of the black rod, or of the serjeant attending the House of Commons, or confined by order of either House of Parliament, it is not consistent with the independent equality which ought to subsist between the two Houses, for the other House to interfere. If they have occasion for the presence of the person so committed, they usually signify their desire to the House which committed him, and ask their leave that he may be brought up to them in order to be examined (a).

One House does not interfere where a person is in custody of the other.

Each House, it has been shewn, may pass such bills as to them may seem proper, with some few exceptions. When, however, a bill has passed one House, and been sent to the other, the provisions of which have been grounded, not upon general notoriety, but upon special facts that are necessary to be proved by evidence, it is usual for the House to which the bill is sent, to ask, either by message or at a conference, the grounds of evidence upon which the bill has passed; and this evidence, whether arising out of papers or from the examination of witnesses, is immediately communicated. But further than this, it is irregular in either House to proceed. To ask why the House where the bill took its rise, passed it in such a manner, or to acquaint the House to which it is sent, that it had passed unanimously, are objectionable proceedings.

Reasons may be demanded by one House, upon which other has passed a bill.

It has not, however, been unusual for either House to remind the other of a bill which, from its importance, has appeared to deserve greater dispatch than the House of Parliament to which it is sent seemed inclined to give it (b).

The next subject of inquiry, will be the cases in which the House of Commons may become suitors to the other branch of the Legislature, for penal justice.

House of Commons may be suitors to the Lords for penal justice.

(a) 3 Hats.

(b) 3 Hats.

Commons as
grand in-
quisitors.

As the grand inquest, or "general inquisitors," of the realm, the Commons of England will be found to have early taken upon themselves the character of accusers before the Lords (*a*), of persons charged with treason, or other high crimes and misdemeanors against the state. The circumstance of the Commons assuming this invidious office, and, as the representatives of the people at large, standing forward the prosecutors of the highest and most powerful offenders against the State, forms a remarkable feature in the criminal jurisprudence of the country.

The assertion of this principle, of the duty of the Commons to carry up complaints to the Lords of any grievous maladministration, has undoubtedly much contributed in this country, to control and repress those acts of injustice and oppression, which ministers in more despotic countries, protected by their great rank and overbearing power, are but too apt to exercise against those who offend them; and has been the means of bringing to condign punishment those "great apostates of the commonwealth," who by their actions or counsels have endeavoured to subvert the fundamental laws of their country, and to introduce an arbitrary and tyrannical government.

At the same time, while it is absolutely necessary for the preservation of our liberties, and the safety of the constitution that the Commons should possess this extraordinary power of bringing great offenders to justice, it may be prudent that it should be sparingly exercised. It ought to be confined to matters not within the cognizance of the ordinary tribunals; to breaches of high offices of trust, particularly judicial aberrations, and to the counselling pernicious or dishonourable measures.

The first Parliamentary impeachments are to be referred to the reign of Edward 3. There is a distant resemblance to this proceeding in the charge against the Dispensers in 1321, 15 E. 2; which, however, was essentially irregular; the Lords having joined in the complaint, as well as in the

award of sentence of exile, and being consequently both accusers and judges (a).

In the following reign of Edward 3, the usual course seems to have been, to present a memorial to the King in Parliament, stating the offences most injurious to the public at the time, and praying that the delinquents (without naming them) might meet the punishment of the law. After the petitioners had received encouragement from the Crown, they exhibited articles of impeachment, specifying the particular culprits, and followed up the prosecution through its several stages, till finally on conviction, they demanded judgment. Of such spirit, and corresponding action, was the famous *Bonum Parliamentum*, holden 50 E. 3.

Impeachments.

Articles of.

In the Parliament 10 R. 2, 1386, the Commons with one accord came before the King, prelates, and lords, in the chamber of Parliament, and accused Michael de la Pole, Earl of Suffolk, and late Chancellor of England, of several crimes (b); the proceedings being little different from those used at present. Richard 2, having become desirous of abrogating Parliamentary impeachments, *ann.* 10 of his reign, proposed to his judges, among other interrogations, the following question: "Since the King can, when he pleases, remove any of his judges and officers, and justify or punish them for their offences; whether the Lords and Commons can, without the will of the King, impeach in Parliament any of the said judges or officers, for any of their offences?" To which, with the basest prostitution of their judicial character, the persons addressed, answered, "That they cannot; and if any one should do so, he is to be punished as a traitor!"

Impeachments lay still, "but," says Hallam, "only like a sword in the scabbard," after the accession of Henry IV. till 28 Henry VI. And then the Commons, in the case of the Duke of Suffolk, proceeded irregularly, inasmuch as the articles of impeachment were directly addressed to the

(a) 2 Woodison, 590.

(b) 1 State Trials.

King, which gave him an opportunity and reasonable pretext (of which he availed himself) to interfere in the judgment, and screen a favourite minister from punishment.

Under the Tudor princes, the institution fell into disuse, from the preference given to bills of attainder or of pains and penalties by those Sovereigns, when they wished to turn the arm of Parliament against an obnoxious subject.

Under the Stuarts, the practice was revived, and has never been entirely dropped; though happily, the cases have not been of frequent occurrence. Impeachment is properly reserved for extraordinary crimes and great offenders. But a difference of opinion exists whether it be confined, in capital cases, to Lords, or whether, by the law of Parliament, *all* persons, commoners as well as peers, may be impeached in capital cases.

No doubt, all the King's subjects are impeachable in Parliament; but, on the authority of the case of Simon de Beresford, 4 Edw. 3, and of Fitzharris's case in 1681, it is contended, that a commoner can be charged with misdemeanors only, and not with any capital offence.

The case of Fitzharris is deserving of a further mention. Though in the last reign, Charles 1, had caused to be prosecuted, for high treason, before the Lords, five members of the House of Commons; Lord Nottingham, on the Commons impeaching Fitzharris, 26th March, 1681, argued vehemently that whatever instances there might be to the contrary, in times of confusion and violence, a Commoner was as little liable to be tried for his life by the House of Peers, as a peer by a petty jury. And he produced from the bills of Parliament (with great effect) an accord made before Edw. 3, in full Parliament, stating "that the judgment of high treason, given by the Lords against the murderers of Edward 2, should never be drawn into a precedent, whereby they might be called upon to judge any others than peers." (*Beresford's case*).

The Lords, on being informed by the Attorney-General that he had been instructed to indict Fitzharris at common law, resolved that they would not (not that they could not)

proceed with his impeachment. The Commons protested against this resolution of the Lords, "as a denial of justice" and a violation of the constitution of Parliament, and "declared it to be their undoubted right to impeach any peer or commoner for treason, or any other crime or misdemeanor."

The authority of the case of Fitzharris is therefore greatly questioned. An impeachment for high treason was depending, at the very time, against Chief Justice Scroggs, who was not a peer. And, in the case of Sir Adam Blair, and four other commoners, impeached of high treason, June 26th, 1689, the Lords, after receiving a report of precedents, and negating a motion for requiring the opinion of the Judges, resolved that the impeachment should proceed.

There seems no doubt that the *Witan* was the tribunal for the trial of *all* great delinquents accused of the heaviest crimes. So, under the Plantagenet dynasty, Parliament was looked to as the great remedial court for the redress of all grievances, private and public. In the High Court of Parliament alone, could a King of England learn when wrongs had been unpunished, and where rights had been delayed. The ordinary Courts of law, if they were sufficiently intelligent, were not sufficiently bold or strong, to redress the subject's injuries, when the powerful minister, or the great officers of the Crown were parties, or where the nobles interfered. Neither are common juries the most fit tribunal to judge of such cases. If a charge of high treason were preferred against a Walpole, a Fox, a Pitt, or a Peel, by a factious majority, (now that commoners are often the first ministers of the Crown), would so weighty a charge be felt to be quite a suitable case for a common jury of "twelve sad men" to determine?

All principle is in favour of the liability of commoners to impeachment; and, as for precedent, Beresford's case is not in point. He was not impeached; and unless he were accused by the Commons, he would not be triable by the Lords; and the peers were warranted in protesting against

their being called upon to judge him, on the prosecution of the King.

The charge.

The accusation of the Commons is in the place of an indictment.

Accused taken into custody.

Witnesses summoned.

Time of exhibiting articles:

The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some members to impeach him, by oral accusations, at the bar of the House of Lords, in the name of the Commons in Parliament assembled, and of all the Commons of the United Kingdom. The person deputed to this office further signifies, that the articles against the accused will be exhibited in due time, and desires that he may be sequestered from his seat in Parliament, or may be committed, &c. The accused is taken into custody, detained, or bailed. The Lords summon the witnesses on both sides.

Form of impeachment.

The Commons claim to be the judges of the proper time of exhibiting their articles; but when unreasonable delays have intervened, they have been repeatedly reminded by the Lords to advance the prosecution, in justice to the accused.

The articles may be stated by the Commons in general terms, without technical exactness, and need not pursue the strict form of an indictment; and the answer of the accused is, in like manner, exempted from a scrupulous adherence to forms; as is also the replication of the Commons in writing. At this stage a joint committee of both Houses has frequently been appointed to adjust other preliminaries of the trial; but such a committee has been also denied on impeachments for misdemeanors (*a*).

Of the trial.

The trial takes place in Westminster Hall, which is fitted up for the purpose.

Lord High Steward appointed, when.

On the trial of a peer, a Lord High Steward is specially appointed (to preside, *pro hac vice*) by the Crown, on the address of their lordships. On the impeachment of commoners, the Lord Chancellor presides, as in the ordinary

(*a*) Commons' Journal, 6, 10; 17 June, 1701.

business of the House. Since the Chancellor has been a layman he has, generally, but not (a) invariably, been nominated Lord High Steward; but then he becomes "His Grace," and presides in a different capacity.

The Commons attend the trial as a committee of the whole House. The managers make and support the charges, but they are bound to confine themselves to charges contained in the articles of impeachment.

Commons attend.
Charges supported.

The trial itself does not differ essentially from criminal prosecutions before inferior Courts. The rules of evidence, and the doctrine of crimes and punishments, are the same. For impeachments are not framed to alter the law, but to carry it into more effectual execution, when it might be obstructed by the influence of too powerful delinquents.

Charges to be confined to the articles.

In cases of capital accusations, the Lords spiritual have a right to stay till the Court proceeds to the vote of Guilty or Not Guilty, and then they have constantly withdrawn; yet their right to vote on bills of attainder was always admitted (a).

When the case is concluded, the Lords proceed to decide whether the accused be guilty of the crimes charged. The Lord High Steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. The peers, in succession, rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breasts, answer, "Guilty," or "Not Guilty," (as the case may be), "upon my honour." Each article is proceeded with, separately, in the same manner; the Lord High Steward giving his own opinion the last. The numbers are then cast up, and, being ascertained, are declared by the Lord High Steward to the Lords, and the accused is acquainted with the result (b).

Lords decide upon their honour.

An impeachment continues from session to session, and is not determined by a prorogation. An impeachment is

(a) 2 Woodison, 603.

(b) Lord Denman presided as Lord High Steward on the trial

of Lord Cardigan, 1842. Printed Trial of Lord Cardigan.

intercepted, but not extinguished, by a dissolution of Parliament; the charge may be resumed, when the House is again assembled (a).

Judgment :

In case of conviction, the Commons demand judgment of the Lords, without which they would object to its being pronounced. The necessity for the Commons to demand judgment, enables them to spare the accused, even after he has been found guilty by the Lords. In the cases of the Earl of Wintoun, in 1715, and Lord Lovat, in 1746, it was resolved by the Commons, "that it is not Parliamentary " for the Lords to give judgment until the same be first " demanded by this House."

Pardon not
pleadable ; but
sentence may
be remitted.

No pardon under the Great Seal is pleadable to an impeachment by the Commons in Parliament. But the King may remit the execution of the sentence, or any part of it (b). Three of the Scots Lords, concerned in the rebellion of 1715, the Earl of Carnwarth, the Lords Widrington and Nairne were respited and ultimately pardoned.

Bills of attain-
der, and of
pains and
penalties.

Bills of attainder and bills of pains and penalties, are instances of the transcendent power of the Legislature to punish offences otherwise than according to pre-ordained law, by a discretionary severity in lieu of an invariable standard. This occasional rigour too, is usually substituted for the ancient rule, at a time when men's minds are heated with political contest, or disturbed with threatened dangers.

They furnish an instance of the Legislature quitting its proper province, and superseding the judicial functions; and that, in order to punish the transgressions of laws which they have neglected to propound. On impeachments, the Commons are accusers, and the peers are judges of the crime imputed. In punishing criminals by bill, the King, Lords and Commons are accusers and judges, charging, convicting, and condemning *uno flatu*.

There remains only, in the last place, to treat shortly concerning the manner in which Parliaments may be adjourned, prorogued, and dissolved.

(a) Printed Trial of Lord Melville, p. 413, May, 378.

(b) 12 & 13 Wm. 3, c. 2, s. 3.

An adjournment, as the word signifies (*a*), is no more than a continuance of the session from one day to another; and this is done by the authority of each House separately every day; and sometimes for a fortnight or a month together, as at Christmas or Easter, or upon other particular occasions. But the adjournment of one House, is no adjournment of the other.

On the question of the right of the House of Commons to adjourn itself—when, and so often as, and to what time it shall please, some doubt was at one time entertained. A right to adjourn the Commons has been claimed by the Crown: but not since the time of Charles 1 (*b*).

An equal right with the House of Commons, (admitting a right in them), has been also claimed by the Executive.

The Commons, on the other hand, claim an exclusive right of adjourning themselves (*c*).

A right to prevent the House of Commons from adjourning themselves has never been claimed in England; it is claimed with regard to the Houses of Assembly in the British Colonies (*d*).

The true Parliamentary doctrine seems to be, that the King has no authority to adjourn the Parliament, but can only signify his desire; and that it is then, in the wisdom and prudence of either House to comply with his requisition or not, as they see fitting. It appears too from the cases (*e*), that the House, even after the signification of the King's pleasure, have proceeded to do business, and then have adjourned "upon question," and sometimes not without a division. It hath, however, been usual, (indeed there is not an instance to be found to the contrary), when his Majesty hath signified his pleasure, that both, or either of the Houses should adjourn themselves *on* a certain day *to* a certain day, to obey the King's pleasure so signified, and to adjourn

(*a*) 1 Black. Com. 186.

(*b*) Stroud's case, 3 State Trials,

235.

(*c*) Finch's case, 4 State Trials.

(*d*) Stokes's View of the Colonies, 242.

(*e*) 5th April, 1626; 11th Aug.

1668; 15th April, 1678.

accordingly; otherwise, besides the indecorum of a refusal, a prorogation would assuredly follow, which would be very inconvenient to both public and private business; for prorogation puts an end to the session; after an adjournment, all things continue in the same state as at the time of the adjournment made.

The result is, that adjournment is in the power of either House respectively: that the desire of the King for an adjournment, will always be respectfully received, and is pretty sure, for obvious reasons, to be complied with; but the question will be submitted to the House, discussed, and after debate; aye, and perhaps, after division; determined by the House; exercising what it calls, a free judgment.

But though always singularly compliant and obedient to adjourn themselves at the desire of the King, both Houses have manifested great displeasure at the conduct of their respective Speakers, when these have proceeded to adjourn either House on the command of the King, without leave of the House. In Finch's case, the House of Commons resolved this behaviour to be a breach of privilege. On the 19th of Dec. 1678, a standing order was made, "That Mr. Speaker shall not at any time adjourn the House, without a question first put, if it be insisted upon." And among the standing orders of the House of Lords is a similar order, "That the Lord Chancellor is not to adjourn the House, without the consent of the Lords first had." The practice in the House of Commons has been, since the order of the 19th Dec. 1678, to put a question for adjourning, although it be not insisted upon. But if notice be taken that there is not a sufficient number of members present to determine the question, then a more ancient rule of the House obtains, and the Speaker adjourns the House from his own authority.

Prorogation.

A prorogation is the continuance of the Parliament from one session to another, as an adjournment is a continuation of the session from day to day. "The diversity," says Lord Coke, "between a prorogation and an adjournment

“ is, that by the prorogation there is a session complete and
 “ ended; and then such bills as passed in either House, or
 “ by both Houses, and had no royal assent to them, must at
 “ the next assembly begin again; but if it be adjourned or
 “ continued, there is no session, and consequently things
 “ continue in the same state. The adjournment is more
 “ beneficial to the commonwealth for the expediting of
 “ causes than a prorogation” (a). The effect of a proro-
 gation is at once to suspend all business until Parliament
 shall be summoned again: all proceedings pending at the
 time are quashed; *exceptis excipiendis*.

Rule : all
business
suspended
thereby.

The proceedings upon a divorce bill, when a warrant has
 been issued, under the Act, 1 Geo. 4, c. 101, for the
 examination of witnesses in India, are not discontinued by
 any prorogation or dissolution of Parliament, until the
 examination shall have been returned.

A writ of error does not determine by a prorogation of
 Parliament (b): So an appeal in causes before the House
 of Lords. The only other exception to the rule, that, after
 a prorogation proceedings must be instituted anew, as if
 they had never commenced, is an impeachment; which
 is not abated by a prorogation, or even dissolution of
 Parliament.

Exceptions :
errors, appeals,
and impeach-
ments : and
in a certain
case divorce
bills.

All general orders and resolutions of Parliament deter-
 mine by prorogation, and any person in custody taken by
 order of the Parliament, may, after their prorogation, be
 discharged on *habeas corpus*, as well as after a dissolution (c).

A prorogation is made by the royal authority, expressed
 either by the Lord Chancellor in his Majesty's presence, or
 by writ under the great seal, directed to the Lords and
 Commons, or by commission from the Crown; and both
 Houses are necessarily prorogued at the same time; it not
 being a prorogation of the House of Lords or Commons,
 but of the Parliament. The first mentioned, is the usual
 mode of proceeding, where the Parliament is prorogued at
 the close of the session.

(a) Effect of Prorogation, 4
Inst. 27.
(b) 2 Lev. 93.

(c) Raym. 120. 1 Lev. 384.
Jacob's Law Dictionary, Parlia-
ment.

By writ.

Parliaments are prorogued by writ, only upon the meeting of a new Parliament after a general election.

By commission.

The proroguing by commissioners specially appointed for that purpose, is the usual form, when the Parliament meets from time to time during the recess. As it is a rule that the same bill cannot be proposed in either House twice in the same session, a prorogation has been occasionally resorted to in former times, to enable another bill to be brought in, where a bill had been dropped from a disagreement between the Houses, or had been rejected.*

If at the time of an actual rebellion, or imminent danger of invasion, the Parliament shall be separated by adjournment or prorogation, the King, it has been seen, is empowered to call them together by proclamation, with fourteen days' notice of the time appointed for their assembling.

Dissolution.

A dissolution is the civil death of the Parliament, and may be effected three ways:—

By the King's will.

1. By the King's will, expressed either in person or by representation. The more ancient form of dissolving the Parliament was by the King's command, signified to both Houses in the presence of the Sovereign in the House of Lords, by the Lord Chancellor or Speaker of that House.

Where the King could not be present in person, a commission was issued under the great seal, appointing certain Lords therein named to be commissioners, for the purpose of executing the royal authority upon this occasion; and this commission was read to both Houses assembled in the House of Lords.

The later practice, and that which had been followed without interruption ever since the Revolution to the present century, has been that the Parliament is prorogued to a certain day; and then a proclamation issues, discharging the members of both Houses from their attendance upon that day, and dissolving the Parliament. If both Houses, or either of them, were under an adjournment at the time, there seems no reason to doubt that the proclamation would have the same effect of putting an immediate end to the Parliament.

* Instances in 1689, 1707, 1727, will be found afterwards referred to, pp. 268, 269.

The practice of proroguing Parliament before its dissolution, which had been uniform for above a century before 1818, had probably arisen from the motives referred to by Charles 1, in 1628, "That it should be a general maxim "with Kings themselves, only to execute pleasing things, "and to avoid appearing personally in matters that may "seem harsh and disagreeable." But in 1818, the Prince Regent dissolved Parliament in person (*a*); and in 1831, William 4, made this explicit announcement of his intentions: "My lords and gentlemen, I have come to meet you "for the purpose of proroguing the Parliament, with a view "to its immediate dissolution (*b*)."

By the King's will.

2. A Parliament may be dissolved by the demise of the Crown. This dissolution formerly happened immediately upon the death of the reigning sovereign. But the calling a new Parliament immediately upon the accession of his successor being found inconvenient, and dangers being apprehended from having no Parliament in being, in case of a disputed succession, it is (as has been before shewn) enacted by the statutes 7 and 8 Wm. 3, c. 15, and 6 Anne, c. 7, that the Parliament in being shall continue for six months after the death of any king or queen, unless sooner prorogued or dissolved by the successor: that if the Parliament be at the time of the King's death separated by adjournment or prorogation, it shall notwithstanding assemble immediately; and that if no Parliament be then in being, the members of the last Parliament shall assemble, and be again a Parliament.

By demise of the Crown.

3. Lastly, a Parliament may be dissolved or expire by efflux of time: for by the act 1 Geo. 1, st. 2, c. 38, it is enacted, that "All Parliaments hereafter to be called "assembled, or held, shall and may, respectively have continuance for seven years, and no longer; to be accounted "from the day on which by the writ of summons such "Parliament shall be appointed to meet." So that Parlia-

By efflux of time.

(*a*) 73 Com. Journ. 427.

(*b*) April 22nd, 1831, Hansard.

Effect of dissolution.

ment must die a natural death at the end of every seventh year, if not sooner dissolved by the royal prerogative.*

When a Parliament is dissolved, impeachments by the Commons, appeals, or writs of error pending in Parliament, and in certain cases divorce bills, do not abate by the dissolution, but the next Parliament shall proceed upon them in the state they were in, at the dissolution (*a*).

(*a*) T. Raym. 383. Warren Hasting's case, 23 Dec. 1790; 39 L. J. 191.

* Lord Coke's quaint comparisons of the Court of Parliament to a clock, and of a Parliament-man to an elephant, are well known, but are more entertaining than instructive. The author of *Lex Parliamentaria* concludes his treatise emphatically in these words: "Nothing ought to be so dear to the Commons of Great Britain as a free Parliament: that is, a House of Commons every way free and independent either of the Lords or ministry; free in their persons; free in their estates; free in their elections; free in their returns; free in their assembling; free in their speeches, debates, and determinations; free to complain of offenders; free in their prosecutions for offences, and therein free from the fear or influence of others, how great soever; free to guard against the encroachments of arbitrary power; free to preserve the liberties and properties of the subject; and yet free to part with a share of those properties when necessary for the service of the public."

CHAPTER V.

The method of making Laws by Bill and Statute—Of Bills during their Pendency in Parliament—The First and Second Reading—Committee—Report—Committees of every kind incidentally considered—Select Committees—Committees of Supply, and Ways and Means—Election Committees.

THE method of making laws by bill and statute is the same in both Houses of Parliament, and the practice of the Lords and Commons, in regard to the several stages of bills, is almost exactly similar.

Practice as to several stages of bills, nearly the same in both Houses.

A division of bills into the two classes of public and private, has been already adverted to; the former are introduced directly, by members of either House, the latter are passed upon the petition of interested parties.

The greater part of the proceedings in Parliament, apply equally to both classes of bills; but private bills are subjected to distinct regulations, and governed by numerous standing orders of both Houses, which make a wide difference in their essential preliminaries.

Most proceedings in Parliament apply equally to public and private bills.

Any peer is at liberty to present a bill in the House of Lords, and to have it laid upon the table; but, in the Commons, a member must obtain permission from the House, before he can bring in a bill. Having given a regular notice, he must move “that leave be given to bring in a bill,” and add its proposed title. He makes this motion to the House, “with some short speech setting forth the needfulness of a law in that behalf” (a); but

Public bill, in what way introduced in Lords.

Motion for leave to bring in, in Commons.

(a) Hakewill's Manner how Statutes are enacted in Parliament, by passing of bills, 132.

generally reserves the full exposition of the principle and objects of the bill to the second reading. If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder, and the name of some other member is occasionally added on the back of the bill.

The persons directed to bring in the bill, present it, in a competent time to the House, drawn out on paper with either blanks or void spaces, or the proposed *quantum* printed in italics, (the course which now obtains) where anything occurs that is proper to be settled by the Parliament itself; (such as the precise date of times, the nature and quantity of penalties, or of any sums of money to be raised); being indeed the skeleton of the bill. But bills of grace come to the House already engrossed on parchment and signed by the King. As a bill may be opposed at either reading, and in every stage, so may its introduction in the first instance, be resisted by any member.

Introduction
may be
opposed.

Bills some-
times ordered
on resolutions
or reports.

Bills are not always introduced by members, on motion. Sometimes a resolution is made by the House and a bill immediately ordered; as in the case of the Bribery and Treating Bill, in 1831. Sometimes resolutions of the House in a former session, are read, and bills are ordered thereupon. But of proceedings preparatory to the bringing in of bills, the most frequent is, the report of resolutions from a committee of the whole House. Upon these being reported and agreed to by the House, a bill is ordered thereupon, or the chairman is sometimes instructed by the committee to move for leave to bring in a bill upon these resolutions.

What bills
originate in
committee of
whole House :
Those
affecting,
1, Religion,

2, Trade,

3, Grants of
public money,

Many classes of bills must originate in a committee of the whole House; or all subsequent proceedings will be vitiated. Such are bills "relating to religion;" (which, however, does not mean tithes and church temporalities,—church government and the revenues of the Church of England, but matters of faith and doctrine); and "to Trade;" (which does not mean trade in general, but any particular trade to be affected by the bill); and to "Grants of Public Money,"

and "charges upon the subject;" all of which must originate in a committee of the whole House (a).

4, Charges on subject.

In the case of some private bills in the House of Lords, particular forms are necessary to be observed. A petition for an estate bill presented to that House, is constantly referred to the judges, to see that all necessary parties consent, and to settle all points (b) of technical propriety. So, if an estate bill be commenced in the House of Commons, on the first reading of the bill in the House of Lords it will, in like manner, be referred to two of the judges; who must report their opinion before the bill can be read a second time. In divorce bills, which always originate in the Upper House, an official copy of the proceedings, and of a definitive sentence of divorce *a mensa et thoro* in the Ecclesiastical Court, at the suit of the party desirous to present the petition, must be delivered on oath at the bar of the House.

Where certain forms before the first reading :

in estate bills :

in divorce bills.

The instructions given, whether to a member, upon leave to bring in a bill, or to a committee upon a bill, are either enabling or mandatory.

Instructions to members or committee, enabling or mandatory.

The following are examples:—

"Instructions to gentlemen appointed to prepare and bring in bills to make provision therein: 'for the better administration of justice in the Court of Chancery, and respecting the salaries of the judges, officers,' &c. (c); 'to alter and amend the law relating to bankrupts, and for erecting a building for the meeting of the commissioners,' " &c.

"Instructions to committees on bills: 'to receive clauses;' 'to alter, and make two bills into one bill;' 'to turn or divide one bill into two or more bills;' 'to hear counsel and do other matters," which the committees would not be empowered or competent to do without such instructions; but in compliance with which, as will be seen hereafter,

(a) Standing Orders, 9 Sept. 1703, 30 April, 1772, and Resolution, 18 Feb. 1667.

(b) Ellis, 12.

(c) See Synthetical Table, by Lord Colchester, prefixed to Index to Commons' Journal.

provisions are made and clauses introduced which, as extraneous to the title of the bill, could not otherwise have been received.

Title of the bill.

In the Lords, the original title of a bill is amended at any time, when alterations in the body of the bill have rendered any change in the title necessary. But in the Commons the original title is never amended during the progress of the bill, unless one bill be divided into two, or two combined into one, and what shall be the title of the bill is the last question determined. Yet the amendment made in committee, must be "within the" (original) "title of the bill."

Amendments must be within.

So provisions, within order of leave.

So, the provisions of the bill, must be "within the order of leave." In preparing bills care must be taken that they do not contain enactments not authorized by the order of leave.

What in the title of temporary or revived laws.

It is required by two standing orders of the House of Commons, of 17th Nov. 1797,—not applicable to private bills,—that the precise duration of every new temporary law shall be expressed in the title of the bill, and also in a distinct clause at the end of a bill, and nowhere else. Also, that where the revival of several expired statutes, or the continuance of several expiring statutes is proposed, all such as are to be revived shall be included in one bill, and such as are to be continued, in another; and that every bill for the revival of several statutes, or for the continuance of several statutes, shall express in its *title* that the same is for reviving or for continuing the several statutes therein mentioned; and shall describe in its *title* every such statute by its year, chapter, and day of passing, together with the precise duration to be given thereto (*a*).

Brought in.

If a draft of a bill be taken by a member to the "Public Business Office," it will be prepared in a proper form for presentation. Every member presenting a bill by order of the House, goes from his place down to the bar of the House, as stated in the last chapter, when the Speaker calls upon him by name, and asks, "What have you there?" He

(*a*) Requisites of temporary bills, or bills for continuing expiring statutes. Comm. S. O.

answers, "A bill, Sir:" and the Speaker desires him "to bring it up," upon which he carries it to the table, and delivers it to the clerk of the House, who reads the title aloud; and then the bill is said to have been received by the House. The bill is in some cases, and in all, should be, delivered, with a breviate or brief of it, to the Speaker. The question is then put for its "first reading." The next question is, "that this bill be read a second time" on some future day, and in the meantime the bill is ordered to be printed.

Received by
the House.

First reading.

The day having been appointed for its "Second Reading," the bill stands in the Order Book amongst the orders of the day, and will be called on in its turn when that day arrives, and the motion for reading it a second time, will not, for that reason, require to be seconded.

Bills, supposing them not to encounter successful opposition, are always read (a) three times before they are passed, except bills (b) of grace, (as for a general pardon), which are passed upon the first reading. "The reason is," (c) says Hakewill, "because the subject must take *that* "as the King will give it, without any alteration; and yet "many times exceptions *are* taken, that it is not so favourable as in former times."

Bills read
three times,
except bills of
grace.

When a bill is transmitted from the other House, the first reading may, from courtesy, be appointed immediately after it is received; if not, it shall be afterwards read on motion, or a day shall be appointed for the purpose. "At the first reading of a bill," (d) says Hakewill, "it is not the course for any member to speak to the bill, but rather to consider of it, and to take time till the second reading, unless it carry matter of apparent hurt to the commonwealth;" or, it may be added, unless it contravene the rules, or infringe the privileges of the House; as when a bill has begun in the Lords which ought to originate in the Commons. "But such offence," resumes Hakewill, "has the House conceived against some bills, as to order them not only to be rejected, but to be torn in the House."

Bill brought
from other
House, read
from courtesy.

(a) D'Ew. 20, 73.

(b) 3 Hats. 64.

(c) Hakewill, 158.

(d) Id.

Additions or amendments ("which imply that the body of the bill is good"), are properly reserved till the second reading.

After each reading, having stated to the House the title and substance of the bill, the Speaker puts the question whether it shall proceed any further?

When a bill is debated and brought to the question on the first reading, the question ought not to be in the ordinary way, whether the bill shall be read a second time, but whether it shall be rejected (*a*); unless such bill came from the Lords, when, "from respect and in favour of the measure, the Speaker should not make the question for rejection in the first instance, as in the former case, or make any question at all upon it, if he can avoid it; it being better," adds Hakewill, "to consider it, before it is put to such hazard."

Course pursued where rights of sovereign are affected.

Where the King is interested as a party in any bill depending before the House of Commons, either as a patron of a living, lord of the manor or soil, or in any other way, a memorial should be addressed to the Lords of the Treasury, with a copy of the bill, showing the propriety and fitness of the measure, and requesting that the consent of the Crown may be signified to the bill. If the property and interest of the Crown be properly secured, or an adequate compensation made for any rights that may be affected, it is usual for the Chancellor of the Exchequer, or Chancellor of the Duchy of Lancaster, to acquaint the House, in the course of the bill, that his Majesty, having been informed of the purport of the said bill, gives his consent, as far as his Majesty's interest is concerned, that the House may do therein as they shall think fit (*b*). And the same, *mutatis mutandis*, when such bill originates with the Lords.

Second reading:
Principle debated.

The usual course is to debate the principle of a bill upon the second reading; and *that* is, therefore, the most important stage through which the bill has to pass. The

(*a*) Scobell, 42.

(*b*) 2 Hats. 336.

member who has charge of the bill, moves "that the bill be now read a second time," and usually takes this opportunity of expatiating upon its merits. This, also, is the stage at which counsel are more usually heard, when the House have agreed that a public bill is of a nature to justify the hearing of "parties" who are interested in it. When the Speaker has declared the state of the bill, that it is a second reading; "then," says Hakewill, "is the fit time for any member to offer to speak to it"^(a); which observation is perfectly just, if it be restricted to the principle of the bill; but objections to the provisions of the bill will be more suitably urged in the Committee.

If the opposition to the measure succeed at this, or any other stage, the bill must be dropped for that session. If amendments are accepted, opportunities will occur of again taking the sense of the House upon the amended bill, on the question "that any clause that has been inserted, shall be left out;" because every stage of a bill submits the whole and every part of it to the opinion of the House; and this being the known order of the House, there can be no surprise upon any person whatever ^(b).

Amendments whether carried or lost, may be reconsidered; but a bill rejected, cannot be renewed the same session.

It has, however, (it should seem not very consistently), been made a matter of doubt, whether a clause that had been left out of a bill, or a clause or particular words, that had been before refused to be admitted, may be again offered to the House, in any subsequent stage of the bill. The rule obviously ought to be the same, whether the amendments first offered are carried in the affirmative or negatived; and the true doctrine, therefore, seems to be, that, in every stage of a bill every part of the bill is open to amendments. either for insertion or omission, whether the same amendment, have been in a former stage accepted or rejected. There is an obvious difference between a rejected amendment, and a rejected bill; the one may be reconsidered, though the other cannot be reproduced, in the same session.

(a) Hakewill, 143.

(b) 2 Hatsell, 128.

The general rule applicable to the case of bills, as it obtains in both Houses, is explicit and clear. It was laid down in the Lords' Journal, 17th May, 1606, on a second bill brought from the Commons to the same purport as a former that had been rejected by the Lords in the same session; "That a bill being brought into the House, and afterwards rejected, another bill of the same argument and matter, may not be renewed in the same House in the same session." But this rule is held not to prevent passing bills for extending (a) the time for executing the provisions of Acts passed in the former part of the session; it does not extend (b) to prevent the putting the same question in the different stages of a bill; nor prevent the discharging of orders (c) that have been made on the greatest deliberation. It is guarded with several qualifications in the celebrated rule (d) of the Lords before referred to; as, "But if a bill begun in one House, be disliked and refused in the other, a new bill of the same matter may be drawn and begun in that House whereunto it was sent; and if a bill being begun in either House and committed, it be thought by the committee that the matter may be better proceeded in by a new bill, it is likewise holden agreeable to the order in such case, to draw a new bill and to bring it into the House." In the Lords' Journal, 25 May, 1689, it is said to be the common course of Parliament, to pass explanatory acts, if anything have been omitted or ill expressed in any other act passed in the same session.

In 1711, when the duty upon leather was first proposed, it was rejected by a majority; but after a little practice upon some members, the same duty was proposed in the same session, only with this variation, "that skins and tanned hides should be charged." But Mr. Speaker Onslow described the measure here spoken of, (to recover the loss of the former question,) as "mean, unparliamentary and dangerous." (e).

(a) 21 June, 1757.

(b) 29 March, 1765.

(c) 14 & 17 Jan. 1766.

(d) 17 May, 1606.

(e) Burnet's Own Times, vol 2, p. 563. 2 Hats. 121.

It is also not a little extraordinary to find a rule, so undeniable as that propounded by the Lords in 1606, directly contravened by the Commons, at as recent a period as 1772 (a). For it was upon this acknowledged principle of Parliamentary law, unquestioned then, and unshaken since, that it was thought necessary to make the short prorogations in 1689, 1707, and 1727; which are deserving particular mention. The bill for declaring the rights and liberties of the subject, and settling the succession of the Crown, which had passed the House of Commons, was lost, from a disagreement between the two Houses, relating to an amendment made by the Lords, for inserting the name of the Princess Sophia in the succession; and all parties being desirous to pass a bill of that great importance, a new session was necessary, to entitle it, in point of form, to be brought in again. Accordingly, on the 21st of October, 1689, the Parliament was prorogued for two days, to the 23rd.

On the 8th of April, 1707, Parliament was prorogued to the 14th, which, Burnet says, was to give the Commons an opportunity of bringing in a bill similar to one that had been rejected by the Lords, relating to the importation of foreign commodities into Scotland.

29th July, 1727, Parliament was prorogued for two days to enable the House of Commons to pass some resolutions relating to the South Sea Company, which were contradictory to some clauses in an Act passed in that session; and which, therefore, the Commons say, "could not otherwise be done agreeable to the ancient usage and established rules of Parliament."

In order to evade the before-mentioned positive rules of both Houses (with which the practice has never been in accordance), and to avoid the effect of certain embarrassing Standing Orders; it is now the established practice to insert a clause in every bill, providing "that this act may be amended or repealed by any act to be passed in this session of Parliament."

Clause that act may be amended same session.

(a) 4th May, 1772.

Committed.

After the second reading, a question is put "that this bill be committed." On this being agreed to, a day is named for the committee.

Committee of whole House how formed : in Lords and Commons.

In the Lords, a committee of the whole House is formed of every member in attendance. In the Commons, there must be forty members present. In both Houses, the Speaker quits his seat and debates and votes like any other member.

On the order of the day being read in the Commons, for the House to resolve itself into a committee on the bill, the Speaker puts a question "that I do now leave the chair:" to which the proper amendment is (a), not "that the Speaker do leave the chair this day six months;" but that "the House will, this day six months, resolve itself into a committee." If the house agree to the question for the Speaker leaving the chair, the mace is removed from the table, and the committee enter upon the consideration of the bill.

Chairman of Lords' committees.

In the House of Lords, a chairman of committees is appointed at the commencement of each session. On the 23rd July, 1800, it was resolved: "That this House will, at the commencement of every session, proceed to nominate a chairman of committees of this House: that such lord as shall be nominated, do take the chair in all committees of the whole House, unless where it shall be otherwise directed by this House."

Chairman of committees in the Commons.

In the Commons, the chair is generally taken by the chairman of the committee of Ways and Means. He calls upon members to speak, puts the question, and maintains order; though, if a serious disturbance arise, or it became necessary, to suppress disorder in a really urgent case, the Speaker will sometimes resume the chair without awaiting the ordinary forms of the House. So, if any public business occur in which the House is concerned, as if the Usher of the black rod should summon the House to attend his Majesty in the House of Peers, or if the time be arrived, for holding a conference with the Lords, the House is resumed.

Conduct of business there.

The proceedings in Committees are conducted in the

(a) May, 279.

same manner as when the House is sitting; except that a motion for the previous question is not admitted in Committee, and that every member may speak in committee as often as he pleases.

A committee can only consider the matters committed to them by the House. An instruction to consider other matters must be given by the House and moved distinctly for that purpose, when the order of the day has been read.

Special instructions.

On public bills, the preamble is discussed last; while in private bills the preamble is to be considered before any other part of the bill. The chairman calls out each clause in succession, with the marginal note, and puts the question: "that this clause stand part of the bill." He then proceeds to the next clause; but, when an amendment is proposed, he states the line in which the alteration is to be made, and puts the question, "that the clause as amended, stand part of the bill." Every blank is filled up as he proceeds, and amendments are proposed in their order, except that it is a rule, that the smaller sum and the longer time, shall be first put.

Proceedings in committing bills.

Every kind of amendment is admissible, provided only that it be within the title of the bill. And the instructions given to committees, it has been seen, often enable them to receive clauses, and to make provisions, in bills, which they could not otherwise have entertained. The preamble which had been postponed, is considered at the end, and if necessary, is amended, to make it conform to amendments made in the bill.

If, in the Lords, the committee cannot go through the whole in one day, the chairman leaves the chair, and moves that the House be put into committee on a future day. In the Commons, the committee instruct the chairman to report progress, and ask leave to sit again.

Motion in Lords:
House be put in committee again.
Commons report progress and ask to sit again.

When the whole bill has been gone through, the chairman puts a question: "That I do report this bill with the amendments to the House;"—which being agreed to, he leaves, and Mr. Speaker resumes the chair. The chairman ap-

Chairman
reports the
bill.

proaches the steps of the Speaker's chair, and reports from the committee, "that they had gone through the bill and "made several amendments thereto;" or "that they had "gone through the bill and directed him to report the same "without amendment." The report itself, may either be received then, or on a future day. If there be no amendment, it is the custom in the Commons to receive it at once: If there be amendments, it is more frequently ordered to be received on some other day. In the Lords, there is a standing order of 28th June, 1715: "That no report be "received from any committee of the whole House the same "day such committee goes through the bill, when any "amendments are made to such bill."

Bill
reprinted.

At this stage,—if several amendments have been made, it is customary to reprint the bill.

Report
considered.

On the consideration of the report, whether taken at once, or deferred to a future day, the House may not only agree or disagree to the amendments of the committee, but may make further amendments and add fresh clauses, whether they be within the title or not.

May be
recommitted.

A bill may be recommitted generally, or on amendments being proposed on the report, it may be recommitted with respect to those amendments only; or the bill may be recommitted, and an instruction given to the committee to make some additional provisions.

As often as
the House
thinks fit.

A bill may be again recommitted, as often as the House thinks fit.

The powers and practice of committees of the whole House, are more largely than edifyingly set forth in the old text books, under the pompous head and sonorous title of "The order and power of Grand Committees:" which grand committees, however, are not, as might be supposed, a different denomination of committees, from committees of the whole House. This will clearly appear from an examination of the incidents of grand committees found in former writers.

Grand
committees.

"When any great business is in agitation which requires

“ much debate (*a*); or a bill for a public tax is to be com-
 “ mitted, the House doth use to resolve itself into a grand
 “ committee; to the end there may be opportunity for fuller
 “ debate ; for that at a committee, the members have liberty
 “ to speak as often as they shall see cause, to one question.
 “ Grand committees have their powers and rules in other
 “ circumstances, given them in express words by the House ;
 “ as, ‘ to send for witnesses,’ ‘ to hear or assign counsel,’ &c.
 “ The resolving themselves into a Grand Committee of the
 “ whole House is done by question, and then the Speaker
 “ leaves the chair, and the committee make choice of a
 “ chairman. A Grand Committee consists of as many mem-
 “ bers at least as constitute a House (forty members); less
 “ may not sit, or act as a committee. The committee is to
 “ divide within the House, the chairman directing the *Yeas*
 “ to one side of the House, and the *Noes* to the other,”
 (except as before excepted,) “ and to appoint one of each,
 “ to count and report the numbers; which is to be done in
 “ the same order as in the House, saving that the obeisance
 “ is only twice in the committee, but thrice in the House.
 “ If the numbers be equal, the chairman hath the casting
 “ voice; otherwise he hath none in the committee. If the
 “ committee cannot perfect the business at that sitting, they
 “ may not adjourn, as other committees ; but a question is
 “ to be made for reporting to the House, and that leave
 “ be asked that the committee may sit another time on the
 “ business.”

Having shown that Grand Committees are only committees
 of the whole House, and having disposed at an earlier period
 of this inquiry, of standing committees and sessional com-
 mittees, it will be convenient to discuss, at this pause in the
 method of proceeding in Parliament by passing bills, the
 incidental topics of select committees in both Houses ;—
 joint committees of Lords and Commons; committees ap-
 pointed to attend certain lords; committees appointed to

Other
committees.

(*a*) Scobell, 38. Lex. Parl. 339.

search the Lords' Journals; the committee of supply; the committee of ways and means; and lastly, "the general committee of elections," and "select committees to report to the House in cases of controverted elections" (a).

Select committees.

A Select Committee is composed of certain members appointed by the House to consider, or inquire into any matters, and to report their opinions for the information of the House.

Appointment in the Lords.

In the House of Lords, there are no special rules in regard to the appointment of select committees. The House resolve that a select committee be appointed; after which, it is ordered that certain lords there nominated, shall be appointed "a committee to inquire into the matters referred, and to report to the House."

The Lords' committees are to be attended by such "judges or learned counsel as are appointed, who are not to sit or be covered unless it be out of favour for infirmity" (b).

Three a quorum.

Three are generally a *quorum* in committees of the Upper House. The House of Lords do not give select committees, any special authority to send for witnesses or documents; but parties are ordinarily served with a notice—to attend and be sworn to give evidence by the clerk attending the committee.

Constitution and practice in Commons.

The House of Commons have prescribed the following regulations as to the appointment, practice and proceedings of select committees (b):

Number fifteen members.

1. The number is usually confined to fifteen members. A larger number may be allowed with leave of the House; such leave to be moved for, with notice. Members are frequently added to committees, and others discharged from further attendance. Five is the usual number that makes a *quorum*; but the House has sometimes directed more, sometimes less, to be the number necessary to attend; without which a committee cannot proceed to business. If the number be afterwards reduced below a *quorum*, the practice

Five a quorum ordinarily.

(a) 91 Com. J. 30; 92 Ib. 893; 93 Ib. 221. (b) Lords' S. O. No. 32.

is similar to that observed in the House with regard to the presence of forty members; business is not interrupted till the fact is noticed: but no question can be decided by vote, without a *quorum*.

2. It should be previously ascertained whether a member proposed to be named, will give his attendance on the committee. In certain cases, when the investigation has been of a judicial character, the House has ordered the committee to report the absence of any member on two consecutive days; a step towards making the attendance compulsory, which heretofore was voluntary and not obligatory.

Attendance of members.

3. The names of the members to be proposed, shall be placed on the notices, one day next before the nomination of such committee.

Notice of names.

4. Lists of members serving shall be affixed in conspicuous places.

Lists of members.

5. The name of the member asking every question, shall be prefixed to such question in the minutes of the evidence.

Questions to witnesses.

6. The names of members present each day shall be entered on the minutes and reported to the House.

Minutes.

7. On divisions, the question proposed, the proposer and the votes of each member, shall be entered on the minutes and reported to the House.

Divisions.

In the Lords' committees the chairman votes like any other peer. In the Commons, the chairman of a select committee can only vote when there is an equality of voices (a).

The House of Commons usually gives to its select committees, "leave to send for persons, papers, and records." By virtue of this authority, any witness may be summoned by an order signed by the chairman; and he must bring all documents which he is informed will be wanted for the use of the committee. Neglect or disobedience of the chairman's order will be punished as a contempt.

Leave to send for persons, papers and records.

All the Lords are admitted to attend select committees of that House; "Any member of our House," says the standing order of the Lords, "though not of the committee, is

In Lords: All lords may come, but not vote.

(a) 91 Com. J. 114.

“not excluded from coming in and speaking; but he
“must not vote” (a).

Strangers
excluded by
Lords.

When a select committee of the House of Lords are taking the examination of witnesses, strangers are generally excluded.

Presence of
members of
House of
Commons.

Members of the House of Commons, claim a right of being present at the proceedings of committees, as well during the deliberations of a committee, as while the witnesses are under examination. On the grounds of courtesy to the committee, and in compliance with general practice, they usually retire when the committee are about to deliberate; but if members should refuse to retire when requested, it certainly does not appear that they can be excluded from a committee room by the authority of the committee.

The House, indeed, may make orders that no person shall be present except the witness under examination; and does so in particular instances. Such was the case with the King's physicians in 1810. Or it may be ordered that members shall only be present at the examination of witnesses, and without interposition, “and not when the committee wish to debate.”

Not on secret
committees.

Sometimes secret committees are appointed, whose inquiries are conducted with closed doors; then, it is the constant practice for all members not on the committee, to be excluded from the room.

Presence of
strangers.

Strangers are generally allowed to be present at the proceedings of committees of the House of Commons; but their exclusion may be ordered at any time, and it is the invariable practice to exclude all strangers while the committees are deliberating.

Adjournment
of committees.

A select committee may adjourn its sittings from time to time. But without special leave, no committee of the Commons may sit during the sitting of the House, nor after any adjournment for a longer period than till the next day. By a sessional order of the Commons it is ordered: “That the
“Serjeant at Arms attending this House, do, from time to
“time, when the House is going to prayers, give notice

Notice of
prayers.

(a) Lords' S. O. No. 33.

“thereof to all committees; and that all proceedings of committees in a morning after such notice, be declared to be null and void.” In order to avoid interruption to urgent business before committees, leave is frequently obtained for a committee to sit till five o’clock; or on a Saturday notwithstanding the adjournment of the House.

The evidence, taken down in short hand, is printed daily for the use of members of the committee. It is in general withheld from publication till the inquiry is completed, and the report is ready to be presented. But leave may be obtained from the House, on the application of the chairman, to “report from time to time.”

Printed
minutes of
evidence.

Leave to
report from
time to time.

Committees of both Houses are now disused, from a feeling of jealousy on the part of the Lords; and may be considered as obsolete, no instances of their appointment having occurred for a century and a half. In appointing these committees, it appears from all the instances, that the same practice was adopted as in naming members to manage a conference between the two Houses, viz. (a) that the number of members of the House of Commons should be double the number of the Lords. The Lords, in these, as in other cases, appointed the time and place of meeting.

Committees of
both Houses.

The advantage to be derived from a joint committee, where the object of the appointment is to examine witnesses, and to receive information, upon which both Houses are afterwards to ground their proceedings, is, that the evidence, which is to be the foundation of their future measures, will, by this means, be precisely the same; not varied by different questions proposed with different views, which might produce different answers, and lead to such information, as might induce one House that had received it, to propose or to adopt different measures, from what might appear proper to the other House, which, in the course of a separate examination, had received no such information. The same questions and answers will form the substance of the report

Advantages of
one inquiry.

(a) 3 Hats. 38, 39.

Joint com-
mittees.

to be made to each House; and in their further proceedings, both Houses will be sure, that the facts and evidence, from which they draw their conclusions, as well as the colour and manner of delivering that evidence, will be the same. If, indeed the joint committee had a power to give any opinion, or make any other report, than of the minutes of the examination of the witnesses, an objection would very properly arise, on the part of the Lords, that the number of the Commons being double the number of the Lords (*a*), that circumstance would take from their lordships all power of deliberation or of conclusion, in matters where there was a difference of opinion; or, which is the same, would render such conclusion of no effect.

The minute books being lost or mislaid, no traces can be found, except in the Journals of the Houses, of the manner in which in ancient times these joint committees proceeded to execute their powers. It appears from Mr. Waller's report, on the 12th of January, 1661, that the Commons did not consider themselves as merely attending a conference with the Lords, where the rules, which have been uniformly observed at conferences between the two Houses, would have prevented them from sitting or putting on their hats; but that, at this committee, they were, in every respect, upon an equality with the Lords, with whom they were joined. When Lord Clarendon made his report to the Lords, on the 7th of January, 1661, he said, "That the committee, finding some 'imaginary jealousies' abroad, of the end and intent of this committee's meeting, the said committee have made no resolutions or opinions, but have thought fit to leave the business to the wisdom of both Houses of Parliament."

Another circumstance, which has by some persons been thought an advantage attending a joint committee of this sort is (*b*), that the examination being to be taken before a committee of the Lords, and it having been usual and the practice of the Lords, that witnesses, to be examined at

(*a*) 3 Hats. 40.

(*b*) 3 Hats. 41.

their committees should be previously sworn at their Lordships' bar, the evidence would in this instance be given upon oath; and that the persons to be examined before this joint committee would, as was done on the 24th and 25th of April, 1695, be sworn at the bar of the House of Lords: by which means their evidence might receive the sanction and authority of an oath, which could not be administered by the House of Commons.

Joint committees.

On the 9th of November, 1666, the Commons desire the Lords to name a committee of their House to join with a committee of the Commons, to the end that the public accounts may be taken and examined upon oath. On the 28th of November, the Lords, at a conference, acquaint the Commons, that they are ready and willing to agree with them in appointing a joint committee, but that they do not find it is warranted by the course of Parliament, "That any committee of Lords and Commons, upon any occasion, have had power given to examine upon oath." The Commons acquiesced.

When it was proposed, in December, 1788, to examine the physicians who had attended his late Majesty, King George 3, in order to lay before both Houses the information of the state of the King's health, and the capacity he was under to attend to public business and to execute the functions of his station, it was first intended, for some of the reasons mentioned before, that this examination should be taken before a joint committee of both Houses; and the forms of proceeding to the appointment of that committee in the House of Commons, and the motions for a conference with the Lords, and the subsequent proceedings, were settled and prepared in order to be moved in the Commons; but when this mode was previously suggested to those members of the administration who were members of the House of Lords, they objected to it, and were of opinion, that the Lords in general would object to appointing a joint committee, where, from the practice adopted in all the former instances, the number of Commoners must be double the number of the Lords; from which circumstance

it might follow, that if there should be a difference of opinion as to the propriety of any question to be put to the physicians, which in a matter of this delicate nature, might very probably occur, the voices of the Lords, being so outnumbered, would be rendered of no effect. This objection, the Chancellor of the Exchequer, Mr. Pitt, alluded to, when he moved for a select committee for this purpose in the House of Commons; and it was upon these grounds, that the appointment of a joint committee of members of both Houses was, in this instance, laid aside. The mode adopted, in 1794, of each House appointing a separate committee, and giving powers to these committees to communicate with each other from time to time, obviated this objection, and yet preserved all the advantages that might have arisen from a joint committee.

A similar proceeding was adopted upon the inquiry into the state of Ireland in 1801; and this modification of the ancient practice, seems likely to obtain for the future and to supersede the former usage. Yet cases are every day multiplying, in which it would seem desirable that *one* inquiry, common to both Houses, could be conducted, preparatory to the determinations of Parliament.

Particular
lords attended
by a committee.

The practice of appointing committees to attend certain lords, and to receive and report to the House of Commons such information as they could give upon particular subjects then under inquiry (*a*), seems to be a mode of proceeding at one period adopted and substituted in lieu of desiring the personal attendance of such Lords to be examined to those points. But from the nature of the proceeding, it must have been very defective to answer its particular purpose. In a personal examination many questions occur, and are interposed, which arise out of the evidence, and could not be thought of on first sending the message; and therefore the House of Commons have very properly, in later instances, as in 1769, when Lord Sandwich and Lord March were examined on the hearing of a petition of Mr.

(*a*) 3 Hats. 79.

Wilkes (*a*), and, in 1779, when Earl Cornwallis was examined on some papers relating to America, departed from this practice, and have desired the attendance of the lord in person, to receive his *vivâ voce* evidence.

It has been the uniform practice of the Commons, if they have occasion to know formally what the Lords have done with respect to any bill or other measure depending, to appoint a committee to search the Lords' Journals on this matter, and to report the proceedings to the House. Nor, to entitle the Commons to this right, is it held necessary that the subject-matter of the search should have originated in the House of Commons. It does not appear that the Lords have ever adopted a similar proceeding with respect to the Journals of the House of Commons; indeed, the practice that has so long prevailed of printing the votes, may have rendered such a proceeding unnecessary. It is certainly fit, that in some mode or other, the proceedings of the House of Commons should be conveyed to their constituents; and that with authority (*b*).

Appointment
of a committee
to search the
Lords' Journal.

It has been already seen that two committees of the whole House are appointed by the House of Commons at the commencement of every session,—the one for considering the *quantum* of the supply granted to the Crown for the purposes of the state;—the other to find out ways and means for raising that supply. The first, commonly termed the Committee of Supply, is appointed by the House to consider of the supply granted to his Majesty by a former vote or determination of the House, in consequence of the order of the 18th February, 1667. “Resolved, that if any
“motion be made in the House for any public aid or
“charge upon the people, the consideration and debate
“thereof ought not presently to be entered upon, but
“adjourned till such further day as the House shall think
“fit to appoint; and then it ought to be referred to the
“committee of the whole House; and their opinions to be

Committee of
supply, and
committee of
Ways and
Means.

Committee of
Supply.

Committee of
Supply.

“ reported thereupon, before any resolution or vote of the
“ House do pass therein.”

As this committee takes its origin from the aids which are demanded by the Crown, it cannot properly have cognizance of any other matters, except such as are laid before the House of Commons by the direction of the Crown (*a*), for the public service ; and, therefore, if at any time, it is thought desirable or expedient to vote a sum of money in the committee of supply, which is not intended for the service of the army, or navy, or ordnance, or any other aid demanded by the Crown, the House must, in order to entitle the committee to take this matter into their consideration, enable them so to do by particular instruction. For if the money proposed to be voted is not part of the supply for the service of the current year, it is as regular to propose it in any other committee of the whole House, as in the committee of supply.

Recommendation from the
Crown.

Supplies.

The House have imposed another restraint upon themselves in the exercise of that important privilege, “ the
“ sole right of granting away the money of their fellow-
“ subjects;” for by a resolution of the 11th of December, 1706, which, upon the 11th of June, 1713, was declared to be a standing order, the House resolve, “ That they will
“ receive no petition for any sum of money relating to
“ public service, but what is recommended from the Crown.” And the uniform practice of the House has applied this order, not only to petitions for public money, or for money relating to public service, but to all motions whatever for grants of money (*b*), whether the grounds of such application have been public or private. Upon this principle, before the committee of supply can take into their consideration the providing for the pay and clothing of the militia, or even before the House can give the committee a power to consider of this service, some member of the House of Commons, authorized by the Crown, must acquaint the House that the King recommends the same to

(*a*) 3 Hats. 172.

(*b*) 3 Hats. 174.

their consideration. It arises out of the nature and constitution of this committee, and its very appointment, “to consider of the supply granted to his Majesty,” that the form of all its resolutions, though they should be for mere private purposes, is by way of a grant to the Crown, to be applied by the Crown to the ends specified in the resolution.

Committee of Supply.

As it is the duty of the committee of supply to consider the estimates for the current year, as soon as the House has resolved itself into such committee, “to consider of the supply granted to his Majesty;” the next business of the House is to order those estimates to be laid before them, and to address his Majesty to give directions for that purpose.

Estimates.

On the 19th of February, 1821, in the House of Commons: the following resolution was agreed to: “That this House considers it essentially useful to the exact performance of its duties, as guardians of the public purse, that, during the continuance of the peace, whenever Parliament shall be assembled before Christmas, the estimates for the navy, army, and ordnance departments shall be presented before the 15th of January next following, if Parliament shall be then sitting; and that such estimates should be presented within ten days after the opening of the Committee of Supply, when Parliament shall not be assembled till after Christmas.”

The estimates for civil services are presented later in the session.—Payments out of the consolidated fund have been already secured by former acts of Parliament. For the remaining expenditure, the Commons provide by annual grants, which authorize the payment of distinct sums for particular services, according to the estimate laid before them. When these estimates and the necessary accounts to elucidate them, are submitted to the committee, the head of the department of the administration for which the supplies are required, explains the necessity and correctness of the estimate, and then proposes each grant in succession, which is put from the chair in these words: “That a sum

Annual grants.

Chairman of
committees of
Supply and
Ways and
Means.

“not exceeding £—— be granted to his Majesty for the
“object specified.”

At the beginning of a new Parliament, the first business of the Committee of Supply, is to elect a chairman, who presides over the committee during that Parliament. If a difference should arise in the committee concerning his election, it must be determined by the House itself and not by the committee. The Speaker resumes the chair and puts a question: “That a particular member do take the chair of “the Committee of Supply,” which being agreed to, the mace is again removed from the table, and the committee proceeds to business under the chairman appointed by the House. This official chairman also presides over the Committee of Ways and Means, and other committees of the whole House; and executes various duties in connexion with private bills.

Ways and
Means.

When the first report of the Committee of Supply has been received by the House and agreed to, a day is appointed for the House to resolve itself into a Committee of Ways and Means.

Committee of
Ways and
Means.

The object of the Committee of Ways and Means is, as is expressed in the title of it, to find out modes of raising the supply, which the House, upon resolutions reported from the committee of supply and agreed to, have granted to his Majesty; and the first consideration attending this proceeding is, that the money proposed to be raised upon the subject, by loans or taxes, or any other mode, should not exceed the sum already granted in the committee of supply. It is for this reason incumbent upon the Chancellor of the Exchequer, or whatever member proposes the ways and means for raising money for the service of the current year, to explain and shew to the House, by a detail of the sums granted for the several services, that the amount of those sums will be sufficient justification, in point of quantity, to the Committee of Ways and Means, to adopt such measures, and impose such taxes, as shall be then recommended to them. And this proceeding ought to be strictly adhered to, in order to show,

that the burthens imposed upon the people are not greater than the public exigencies require.

The Committee of Ways and Means being specially appointed for considering such propositions only as may raise the supply granted in the current session of Parliament, cannot properly take any other matter into their consideration, without particular powers given them for that purpose, by instruction from the House. And therefore where it is found necessary to impose taxes or to charge duties, which are not to be applied towards the service of the year, this, if done in the Committee of Ways and Means, (for it may be done with more propriety in any other committee of the whole House appointed for the purpose,) must be done by special authority from the House.

Grants, not part of the supplies for the year, to be authorized by committee of whole House.

On the 22nd February, 1821, a resolution was agreed to, "That this House will not proceed upon any motion for an address to the Crown praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole House: and that the same be declared a standing order of the House."

Addresses for public money.

It is in the Committee of Ways and Means that the financial statement for the year, is made by the Chancellor of the Exchequer, or the First Lord of the Treasury, who concludes by proposing resolutions for the adoption of the committee. The rule before mentioned of the least sum and the longest time, is most frequently brought into operation in this committee.

Annual budget.

In general, a committee drops, from neglect of the chairman in not asking leave to sit again, or from an adjournment, or for want of forty members, or from the order of the day for the committee (*a*) being omitted to be read and disposed of; when it may be revived by a special order (*b*). But where the Committee of Supply is closed without any direction to the chairman to ask leave to sit

Dropped committee.

(*a*) 22 Jan. 1717.

(*b*) 14 March, 1743.

Resolutions
reported and
agreed to by
the House.

again, and it is afterwards found necessary to vote a further sum of money, the same form and proceedings are again observed, as at the beginning of a session (*a*).

The resolutions of the Committees of Supply, and Ways and Means, are reported on a day appointed by the House, but never on the day on which they are agreed to by the committee. When the report is received, the resolutions are agreed to by the House, or may be disagreed to, amended, or recommitted; but the amendment can only effect a diminution not an increase; as public burdens can only be imposed in committee. If the resolutions be approved and agreed to, bills are ordered to carry them into effect. The greater part of the resolutions of the Committee of Supply are reserved for the appropriation bill.

Committee
closed.

When the Committees of Supply and Ways and Means, are closed, the House of Commons pass a bill, in which the several grants that have been made in the Committee of Ways and Means, by land tax, malt tax, loan, sinking fund, &c. are recapitulated, and directed to be applied to those services which have been voted in that session in the Committee of Supply, specifying the particular sums granted for each service, and appropriating the money that shall be paid into the Exchequer for their discharge, and directing that the said supplies shall not be applied to any other, than the purposes mentioned in the said act.

Appropriation
bill.

This measure, of appropriating the grants of the Commons to be applied to particular services, was first conceived, in consequence of the expensive habits of the reigning prince, soon after the Restoration. The ministers exclaimed against the novel proposition, as "Monstrous, introductive to a "commonwealth, and not fit for monarchy" (*b*). This idea, however, which was conceived originally, only as a restriction upon those who had the management of the public revenue, was at the Revolution, adopted in a much larger extent; and made part of that new system of government,

(*a*) 22 Jan. 1706. 20 July, 1715. (*b*) Lord Clarendon's Contin. 315.

which was then established for the better securing the rights, liberties, and privileges of the people. Immediately after that era, all the grants of the Commons that were intended for the service of the current year, were in the Act of Parliament which carried those grants into effect, applied and strictly appropriated to that specific service. The Commons at the same period took upon themselves the authority of judging, as well of the nature, as of the *quantum*, of the particular services recommended to them by the Crown; and voted of the army, navy, and ordnance, such proportions only, as appeared to them, upon due consideration of the state of the country with respect to its foreign enemies and internal defence, necessary and expedient for these purposes.

Application of
sums voted to
specific
services.

The mode of appropriation varied throughout the reigns of King William and Queen Anne, down to the conclusion of the peace of Utrecht. Since that time there has been little variation. The sums voted for the different heads upon account of the army, ordnance, militia, foreign subsidies, and other particular services, are, in the bill of appropriation, separately and specifically applied to those services for which they are granted. But in the instance of the supply granted towards the navy, the practice has been different. In this service, all the different grants under the heads of wages, victualling, ordnance, ordinary and extraordinary, are in the appropriating bill added together, and the whole sum arising out of all these separate grants, is appropriated generally for the naval service. This distinction in the form of proceeding between the navy and all other public services, in a matter so important, has arisen from necessity, and the impossibility that has been found, from the nature of the sea service, to confine the expenditure of the sums granted for wages, or building or rebuilding of ships, to those immediate services, and to no other. So that, if it be found expedient and necessary, the whole of the navy money, except that voted for the navy debt, may be by law applied to any one part of the service;

subject, however, to a future inquiry and examination by the House of Commons, into the necessity or propriety of such application.

Extra-
ordinaries.

In all the different services, the navy, the army, and the ordnance, there has usually been an excess, or debt contracted upon each, which has been brought before Parliament in a subsequent session, under the title of "navy debt," or "extraordinaries incurred and not provided for." On the 29th March, 1734, the House of Commons, in consequence of a message from the King, assured him that they would make good any extraordinary expenses he might be put to; and in the clause of appropriation, they empowered his Majesty to employ such sums of money towards the augmentation of his forces by sea and land, as should be necessary, and as the exigency of his affairs might require (*a*). A protest of the Lords upon the commitment of this bill, states unanswerably, that "the appropriating clause in this act is, in effect, an unappropriation of all the money that has been raised this year, and puts it in the power of a minister to divert any of the supplies to whatever purpose he shall think fit."

Vote of credit.

Soon after, another, and (in so far as it was limited), a better mode was adopted, which though it gave the ministers credit for the manner of disposing of the money voted, confined that credit to a precise and special sum. In 1739, 1756, and 1757, successively, that mode prevailed which has been followed ever since, and has been called a vote of credit, or supply of credit. It is incumbent upon the House of Commons, not only to make this supply of credit as small as possible, but in a subsequent session, to inquire into the particular expenditure of the sum granted, and to be assured that it is strictly applied to those purposes for which it is intended (*b*). The most regular proceeding seems to be, to vote this supply of credit in the committee of supply; and to come to a resolution in the committee of

(*a*) 11th April, 1734.

(*b*) 3 Hats. 39.

ways and means, that a sum to that amount, be raised by loans or Exchequer bills, to be charged on the next aids to be granted by Parliament.

It only remains to consider committees appointed under the 7 and 8 Victoria, c. 103, superseding the temporary act before in force for the trial of controverted elections, 4 and 5 Vict. c. 58. These are, "the General Committee of Elections," to which all election petitions are referred, and whose duty it is to choose a committee for the trial of each petition, in the manner pointed out by the Act; and the particular committees, which are called "Election Committees."

General Committee of Elections, and Election Committees.

Prior to the year 1770, these questions of disputed elections and returns of members to serve in Parliament, were decided in a very unsatisfactory manner by the House at large.

Returns first decided by votes of the House at large.

The statute 10 Geo. 3, c. 16, better known by the name of its author, as the Grenville Act, besides abolishing that "shameful mode of trial, in which," says Hatsell (*a*), "under the former judicature for deciding controverted elections, every principle of decency and justice was notoriously and openly prostituted," established a mode of trial by a select committee of fifteen, (reduced afterwards by the Consolidated Act (*b*) to eleven) members, who were chosen by lot, and sworn "well and truly to try the matter of a petition referred to them, and a true judgment to give according to the evidence." The proceeding under the Grenville Act, was spoken of in the first edition of this Treatise, as the "excellent, but not altogether unexceptionable mode, which at present prevails." Due justice was done to it, as a vast improvement upon its antecedents; but at the same time, doubts were intimated of its perfect completeness. It had even then, begun to be felt that, whichever of the great contending political parties, was in the fuller attendance on the day appointed for a ballot, was sure to obtain a preponderance in the committee. Still,

Under Grenville Act by sworn members, on the principle of the ballot.

(*a*) 2 Hatsell, 20.

(*b*) 9 Geo. 4, c. 22.

By latter act
on principle of
selection,
instead of
chance.

Petition.

Petitions com-
plaining of
1, undue
election; or,
2, undue
return, only
proceeded on,
when signed
by voters or
candidates.

the select committees appointed pursuant to the statute, were for a long time considered to have examined and decided the important rights of election, with great integrity and purity, as well as discrimination and prudence. But the tendency *in pejus* is universal and indiscriminate. The expedient of chance in the appointment by lot, eventually proved feeble and ineffectual to counteract party spirit. In 1839, therefore, and subsequently in 1841, an experimental act passed, establishing a new system upon the opposite principle of selection; leaving as little as possible to the operation of chance, and increasing the responsibility of individual members. The measure was found efficient; and its provisions have now, with some slight modifications, been made perpetual (a).

Under the present, as well as the former election law, it is necessary first to advert to the petition, upon which all the subsequent proceedings are founded. For, the members returned by the sheriff or other returning officer, are the sitting members, until the House of Commons, upon petition, shall adjudicate upon the return. An election can only be questioned by petition presented to the House, within the time limited by their sessional orders.

A petition complaining of an undue election or return, (or of the omission or insufficiency of a return), cannot be proceeded on, unless signed by some person claiming (1) to be entitled to vote at such election, or (2) to have had a right to be returned as duly elected thereat, or (3) alleging himself to have been a candidate at such election.

Before the Grenville Act, the House admitted no petitions against undue elections, except from the electors or candidates. That act, having for its object to deprive the House of the power of trying any controverted election, and to refer such question to another tribunal,—admitted every petition from whatever quarter, complaining of an undue election or return, and sent it to a select committee. This indulgence was greatly abused; and a later act,

(a) 7 and 8 Vict. c. 103.

28 Geo. 3, c. 5, s. 1, thereupon passed, with a view, as the preamble states, "to discourage persons from presenting "frivolous and vexatious petitions, or setting up frivolous "and vexatious defences;" which was only a recurrence to the Parliamentary practice which existed anterior to the 10 Geo. 3, c. 16.

But the Grenville Act was itself defective. It provided only for cases of undue elections or returns; obviously not contemplating certain other cases not impossible to arise; such as those where no return is made to the writ, or where it is made not in due time; or where the return is of special matters. The case of Westminster, in which the House felt the impossibility of referring to a select committee under the then existing law, a petition complaining of *no return* having been made (a), discovered the defect in that statute. The House then passed the 25 Geo. 3, c. 84, the tenth section of which provides, that if no return shall be made to the writ on or before the day on which such writ is made returnable; or if a writ shall have been issued during any session or prorogation of Parliament, and no return shall be made to the same within fifty-two days after the day on which such writ bears date; or if such return, shall not be a return of a member or members according to the requisition of the writ, but contain special matters only concerning such election; any person claiming to have had a right to vote, or to be elected, at such election, thinking himself aggrieved, may petition the House concerning the same.

Petitions preferred in cases of
3, no return;
4, not in due time; or within fifty-two days of date; or
5, not according to requisition of writ, but of special matters.

In the case of petitions not alleging the before enumerated and specified grounds of complaint, and not subscribed by the persons, or classes of persons, before mentioned, but complaining generally against an election, the House cannot receive them as election petitions; the witnesses cannot be examined on oath, or the return be legally affected by any decision of the House; unless they complain of general bribery; for which special provision is made by statute.

At the beginning of every session of Parliament, a

Petitions when presented.

(a) In 1784.

Within four-
teen days.

resolution is passed, which limits the time for presenting petitions, to within fourteen days after passing the resolution, or within fourteen days after any new return shall be brought in; and this order is passed on the first day of the session. The first order which appears in the Journals (*a*) for limiting to fourteen days the time for questioning elections, was made in the first Parliament of Charles 1, and so the practice continued till 1707, when a resolution of a committee, appointed to consider of methods for the more easy and speedy trying and determining of controverted elections, was made a standing order of the House. This order directed "that all petitions upon every
" new Parliament, relating to elections and returns, be
" delivered to the clerk of the House, and be laid by him
" upon the table before the Speaker is sworn" (*b*). At the beginning of the next session this ceased to be a standing order, but it was virtually considered in operation in the form of a resolution; whilst in the cases of petitions produced by vacancies occurring during the session of Parliament, the old limitation of a fortnight was still adhered to.

By the recommendation of another committee, in 1722, the old practice was returned to, and fourteen days is now the limitation of time within which a petition may be presented, as well in cases after the election of a new Parliament, and upon vacancies during a prorogation, as after a vacancy occurring in the middle of a session. And the practice of Parliament in this respect is very strict. When a petition was delivered to the clerk of the House on the evening of the day on which the fortnight expired, but after the House was up, although there were very particular circumstances in the case, the House refused to relax the rule (*c*). But when the House has not sat on the fourteenth day, the rule has received an equitable construction (*d*), and petitions have been received on the next day of its sitting, although after the expiration of the fourteen days. Where

(*a*) Journals, 821.

(*b*) 2 Rogers, 36.

(*c*) 1 Dougl. 84, Introd.

(*d*) Northampton case, 1 Dougl. 82.

the fourteen days expire during an adjournment, application is made to the House to extend the time, and receive the petitions. Petitions in such case must be presented on the first day of the meeting of the House after the adjournment.

By another sessional order, "all persons who shall question any return upon any allegations of bribery and corruption," &c. may question the same at any time within twenty-eight days after the date of the payment of such bribe, or if the House be not then sitting, within fourteen days of its meeting.

On allegations of bribery and corruption within twenty-eight days.

In regard to members whose seats may be affected by petitions, the following order is made:—

"That all members who are returned for two or more places in any part of the United Kingdom, do make their election for which of the places they will serve, within one week from and after the expiration of the fourteen days before limited for presenting petitions, provided there be no petition against the return of that place."

Members returned for two places.

"That if anything shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate."

Members questioned, to withdraw during debate.

"That all members returned upon double returns do withdraw till their returns are determined."

"Where a petition has been presented against the return of a member returned for two or more places, complaining of his return for one place only, he cannot elect to serve for either."

Double returns.

"When there is a double return, neither member can vote, because one has not a better claim than the other."

Resolutions are also passed against the interference of peers in elections, and in condemnation of irregular practices to influence the freedom of elections. So, in censure of bribery or other corrupt practices by members or candidates.

Resolution against interference of peers in elections.

If a petition be not taken into consideration during the session in which it is presented, it is necessary that it should be renewed in the next, and in every subsequent session of Parliament, until it shall be tried. The renewed

Renewed petitions.

petition must be the same in substance as the original petition, and must not contain any new allegations, or it is supposed, receive any new signatures; but signatures may be withdrawn.

Withdrawing
petitions.

Under the stat. 28 Geo. 3, c. 52, s. 8, a power previously possessed and liberally exercised by the House, of giving leave to withdraw petitions, was greatly restrained; but it is now held competent to a petitioner to withdraw his petition upon due notice that it is not intended to proceed with the petition; subject to the payment of the taxed costs of the sitting member, and of any person who has been admitted to oppose the petition (*a*).

Form of
petition.

Those who desire to petition must be careful, in the first place, to comply with the terms of the statute, and state the character in which they claim to be heard, on the face of the petition; the Legislature having confined the right of presenting petitions to persons claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned as duly elected thereat, or alleging himself or themselves to have been a candidate or candidates at such elections. In the Middlesex and Caermarthenshire cases (*b*), the averment of the petitioners was only that they were freeholders of the county (*c*): and they did not allege themselves to have been voters at the election, nor claim a right to have voted: these petitions were, with great difficulty as to the former case, admitted; but the Nottingham case, at a later period, showed a disposition to require a stricter conformity to the directions of the statute. In the petition on that case, persons living in the city of London averred that they had a right to vote, and did vote, at the last election of members to serve for the said town and county in this present Parliament. It thus did not appear that the petitioners were persons having a right to vote for Nottingham. There was nothing to which the word "said" could refer, but the city of London in which the petitioners were described as residing. The

(*a*) 7 & 8 Vict. c. 103, s. 17.

(*b*) 1 Peck. 301.

(*c*) 1 Peck. 289.

committee determined that the petitioners should not be allowed to proceed (*a*).

In framing the petition, there is no technical form prescribed, or settled by usage. The petition may be drawn in general terms; so, however, as the matter charged be stated in the form of a complaint. At the same time, the facts intended to be relied on in evidence should be distinctly alleged, that the party who is to be affected by them, may be sufficiently apprised of the charges he is called upon to disprove. Mere matter of inducement, or words of recital (*b*), shall not be afterwards admitted to proof, as if they were substantive allegations. No evidence will be admitted in matters not charged; and where a petition contains specific charges against a returning officer, or specific objections to particular votes, it is not competent to the petitioners to enter into evidence of other charges not alleged, or to impeach other voters not particularized. When specific grounds are stated, it is still customary and advisable to use general words of complaint, and to conclude with a comprehensive prayer for relief.

To conclude with prayer for relief.

It was a (*c*) resolution of the House of Commons, that according to the true construction of the 10 Geo. 3, c. 16, (the Grenville Act,) whenever a petition complaining of an undue election or return should be offered to be presented to the House within the time limited by the order of the House, the said petition should be delivered in at the table and read, without a question being put thereupon. There was also a resolution of the 25th May, 1784 (*d*) embodying the substance of several former orders, that whenever several petitions, complaining of undue elections or returns, should at the same time be offered to be presented to the House, Mr. Speaker should direct such petitions to be all of them delivered in at the table, where they should be classed, and read in the following order, viz. such petitions as complain of double returns, in the first class; such as complain of the election or return of members returned to serve for two or

Petitions to be received without a question put.

Classing petitions.

(*a*) Corbett and Daniel, 197.

(*b*) London, 2 Peck. 271.

(*c*) 6th Dec. 1774.

(*d*) 40 Journ. 11.

Order of taking
petitions.

more places, in the second class; such as complain of returns only, in the third class; and the residue of the said petitions, in the fourth class; and the names of the places to which such petitions contained in the first class if more than one, should relate, should in the first place, be written on several pieces of paper of an equal size, and the same pieces of paper should then be rolled up, and put by the clerk into a box or glass, and then publicly drawn by the clerk; and the said petition should be read in the order in which the said names should be drawn; and then the like method should be observed with respect to the several petitions contained in the second, third, and fourth classes respectively.

By a resolution passed at the commencement of every session, such petitions as complain that no return has been made of a member or members to serve in Parliament, are ranked in the first class. Renewed petitions, it is in like manner ordered, "shall be read in the order in which they" "were directed to be taken into consideration by the last" "Parliament."

Recognizances
entered into.

The next step for the petitioners to take, is to enter into a recognizance, with sureties for the payment of costs and expenses.

By the statute it is provided (*a*) that, before any election petition is presented to the House, the person subscribing it or some one of them, if more than one, must enter personally into a recognizance in the sum of £1000, with one, two, three, or four sufficient sureties for an additional sum of £1000 (in sums of not less than £250 each,) for the payment of all costs and expenses arising out of the trial of the petition.

Sureties.

But an option is afforded to the petitioners to pay £1000 into the Bank of England, instead of finding sureties.

The sureties are to make affidavits of their sufficiency, and, besides their names and usual places of residence, such other description of them is to be inserted in the recognizance as may be sufficient to identify them.

(*a*) 7 and 8 Vict. c. 103, s. 3.

The Speaker is to appoint a fit person to fill the office of examiner of recognizances, and a provision is made for the Speaker to appoint a *locum tenens* during the temporary absence of the examiner (a). The recognizances may either be entered into before him, or before a justice of the peace, and afterwards delivered to him.

Examiner of
recognizances.

No election petition can be received unless at the time it is presented to the House, it be endorsed with a certificate under the hand of the examiner of recognizances, that the recognizance has been entered into or the money paid (b).

Certificate.

On or before the day on which the petition is presented, the names and residence of the sureties should be entered in a book kept in the office of the examiner of recognizances, open to the inspection of all parties concerned. The parties defending the return, may object to the sureties, provided the ground of objection be stated in writing, within ten days after the presentation of the petition, if the surety objected to, reside in England, or within fourteen days, if the sureties reside in Scotland or Ireland. A statement of the objections is to be put up in the office, and copies may be taken. The examiner of recognizances inquires into the alleged insufficiency of the sureties objected to, decides and reports to the Speaker on the sufficiency of the sureties (c).

Objections to
sureties.

Sureties
reported.

There are certain cases in which a voter may petition the House, to be admitted a party in the room of the sitting member, to *defend the seat* : as—

Parties to con-
troverted
elections.

1. If at any time before the appointment of a select committee to try a petition, the Speaker of the House of Commons shall be informed, by a certificate in writing, subscribed by two of the members of the House, of the death of the sitting member or sitting members whose election or return is complained of in such petition, or of the death of any member or members returned upon a double return, whose election or return is so complained of.

Where sitting
member
vacates his
seat, or de-
clines defend-
ing, voter
may petition
to defend the
seat.

2. If the Speaker be informed, that a writ of summons has been issued under the great seal of Great Britain, to

(a) By sect. 5, 6.

(b) By sect. 10.

(c) By sect. 16.

summon any such member or members to Parliament as a peer of Great Britain.

3. If the House of Commons shall have resolved, that the seat of any such member is by law become vacant.

In four cases enumerated by stat. 28 Geo. 3, c. 52, s. 2, immediate notice to returning officer.

4. Lastly, If the House shall be informed, by a declaration in writing, subscribed by such member, and delivered to the Speaker, within fourteen days after the petition was presented, that it is not the intention of such member to defend his election or return; in these specified cases, notice shall immediately be sent by the Speaker to the sheriff, or other returning officer: and such sheriff, or returning officer, shall cause a true copy of the same to be affixed on the doors of the county hall, or town hall, or of the parish church nearest to the place where such election has usually been held. Such notice is also directed by the Act, to be inserted, by order of the Speaker, in one of the two next *London Gazettes*.

Publicity having thus been given to the circumstance that the seat is undefended, and a convenient time afforded for the parties interested to consider what course to take, and to prepare a case, if they decide to defend the seat, within fourteen days after the presentation of the petition, or within twenty-one days after notice in the *Gazette*, it shall and may be lawful for any person claiming to have had a right to vote at such election, to petition the House, praying to be admitted as a party or parties in the room of such member or members or to oppose the prayer of such election petition; and such person or persons shall thereupon be so admitted as a party or parties, together with, or to fill the room of such sitting member, and shall be considered as such to all intents and purposes whatsoever, and every such petition shall be referred to the general committee of elections (a).

Member not defending, may not take part, sit or vote.

A member giving notice of his intention not to defend his election, is not admitted to appear or act as a party against the petition in any subsequent proceedings; and he is also restrained from sitting in the House, or voting on any question, till the petition has been decided on (b).

(a) By sect. 18, 19.

(b) By sect. 20.

Such, as regards parties and proceedings, are the modes of preparation for the trial of cases of controverted elections. But, what, it will next be inquired, is the law to govern those cases; and what the judicature to try them? How tried.

The law is the statute law. The House of Commons are, in this case, undoubtedly a Court of judicature, administering the statute law. The function of the Court is to interpret the Act of Parliament, and to execute its provisions. The tribunal to which the subject-matter is referred, is a Court, for the trial expressly of controverted elections, constituted under the 55th clause of the statute, 7 & 8 Vict. c. 103. The law :

The tribunal. It only remains to investigate the *modus operandi*?

On or before the expiration of the time limited for receiving election petitions, the Speaker appoints by warrant *six* members of the House, as the general committee of elections; who, shall be, first, willing to serve; secondly, against whose return no petition shall be then depending,—and thirdly, none of whom shall be a petitioner complaining of any election or return. The Speaker's warrant is laid on the table of the House, and if not disapproved of by the House in the course of the three next days of business, it takes effect. But if the House should disapprove the warrant, a new appointment shall be made. The disapproval may be either general, in respect of the constitution of the whole committee, or special, in respect of particular members. The Speaker may name in his second warrant those not specially disapproved (*a*). The mode of proceeding.

Appointment of general committee of elections.

The appointment of a member of the general committee, is until the end of the session, unless he shall cease to be a member, or resign, or be reported by the committee to be disabled by continued illness from attending the committee. Duration of.

On the report of the committee, that by continued absence of more than two of its members, or by reason of irreconcilable disagreement of opinion, the committee is unable to proceed in the discharge of its duties, or by a resolution of the House of Commons, that the committee shall be dissolved (*b*), the general committee is liable to be Dissolution of.

(*a*) See sect. 21, 22, 23, 24.

(*b*) Sect. 27.

dissolved, and the Speaker may reappoint the general committee by warrant.

First meeting.

Committee sworn.

The Speaker appoints the time and place of meeting of the general committee; but no member shall act upon such committee until he shall have been sworn at the table of the House by the clerk or chief assistant: "truly and faithfully" "to perform the duties belonging to a member of the said" "committee, without fear or favour, to the best of his" "judgment and ability" (a).

Quorum of four.

Subject to the provisions of the act, the general committee are empowered to make regulations for the order and manner of conducting business before them. No business can be transacted by or before the general committee, unless at the least four members be present, and no appointment of a select committee made by them, shall be of force unless at least four out of the six agree in the appointment (b).

Minutes.

Minutes of their proceedings are kept by the committee clerk appointed to attend them, and a copy of the minutes is laid before the House of Commons (c).

Members excused from serving.

Wholly excused.

Sections 34 and 36 of the statute, relate to members wholly excused, and members temporarily excused, from serving on committees for the trial of election petitions. For, before the General Committee of Elections proceed to choose committees for the trial of election petitions, a list is prepared of all members liable to serve. Every member who is upwards of sixty years old is wholly excused from serving. He must make his claim on that express ground, either in his place in the House, or in writing under his hand, delivered to the clerk at the table. And he is further required to make such claim on or before the last day for questioning returns; or upon reading over the names of members excused; or afterwards, if he shall then, (and not till then) have become entitled to make his claim. But no member can be excused, unless he have made his claim before he is chosen to serve on an election committee.

List of members excused

On the next meeting of the House, after the last day

(a) Sect. 29.

(b) Sect. 30 and 31.

(c) Sect. 32.

for questioning returns, the clerk reads over the names of the excused members, when other excuses may be made. Members who have leave of absence may be excused during such leave. If any member in his place offers any excuse, the substance of his allegation is taken down by the clerk, and entered on the Journals for the opinion of the House to be taken thereon. Excuses of the First Lord of the Treasury, the Secretaries of State, the Chancellor of the Exchequer, the Chairman of Ways and Means, &c., that they could not attend election committees from the nature of their public duties, without great inconvenience and detriment to the public service, are made and admitted; "during the time they shall continue to hold their offices" (a).

for age, read over.

Members temporarily excused.

Every member who has served upon an election committee, and who, within seven days after its report, notifies to the clerk of the general committee, his claim to be excused from serving again, is excused during the remainder of the session (b); unless the House shall at any time resolve upon the report of the general committee, "that the number of members who have not so served, is insufficient." But no member shall be deemed to have served upon an election committee, who, on account of inability or accident, shall have been excused from attending the same throughout.

General ground of excuse.

Besides these, which are excuses, there are certain situations and circumstances under which members are disqualified from serving. Every member is disqualified, 1st, whose return has not been brought in for a time exceeding fourteen days; 2ndly, who is a petitioner; or 3rdly, petitioned against; or 4thly, who has served on a committee, which within seven days, has made a final report (c).

Temporary disqualification.

An alphabetical list of members to serve on election committees, distinguishing the excused and disqualified members, and omitting those wholly excused from serving, is prepared by the clerk and printed and distributed with

List of members to serve on election committees, printed with the votes.

(a) May, 353.

(b) Sect. 36.

(c) Sect. 37.

the votes of the House. During three days next after the distribution of the list, further corrections may be made in the list, by leave of the Speaker (*a*).

List referred to general committee, who choose chairmens' panel;

The corrected list is referred to the general committee of elections, who select in their discretion, six, eight, ten, or twelve members, whom they shall think duly qualified to serve as chairmen of election committees, and the members selected, are formed into a separate panel, called "the chairmens' panel." Unless discharged by the House, every member placed on the chairmens' panel, shall be bound to continue upon it until the end of the session; but he shall not serve on an election committee otherwise than as chairman; and when he has served once on an election committee, he shall be excused from further service (*b*).

Provisions are found in the statute, for supplying vacancies in the chairmens' panel, (which must not exceed eighteen members without leave of the House); and regulations for the appointment of chairmen (*c*).

Remainder of the list divided into five panels.

After the chairmens' panel is selected, the general committee of elections, divide all the members remaining upon the list into five panels; containing as nearly as possible the same number of names. Those panels are reported to the House, and the clerk decides by lot, at the table, the order in which they shall stand, and distinguishes each by a number. The panels are then returned to the general committee of elections, and shall be the panels from which all election committees are chosen (*d*).

Members absent on leave, transferred to other panels.

The general committee correct the panels from time to time, and by section 45, have power to transfer to another panel the names of members who have obtained leave of absence.

Election petitions referred to the general committee.

To the general committee all election petitions are referred, and to them the Speaker communicates all notices of deaths or vacancies, and declarations of sitting members that they do not intend to defend their seats; so, all reports

(*a*) Sect. 39.
(*b*) Sect. 40.

(*c*) Sect. 42. 44.
(*d*) Sect. 41, 42.

concerning the sureties; and provisions are made to meet the different cases (a).

The General Committee determine how many election committees shall be chosen in each week, and the days on which they will meet to choose them, in the order in which the petitions stand in the list. Notice of the time and place at which the committee will be chosen to try any election petitions, is published in the votes, and when the conduct of the returning officer is complained of, sent to him through the post, fourteen days before the committee is chosen. Every notice directs all parties interested to attend the general committee by themselves, their counsel or agents, at the time appointed for choosing the select committee. Notice is also published with the votes, of the petitions appointed for each week, and of the panels from which each committee will be chosen, and of any suspension of matters of a petition; which enables every member to see when his services are required (b).

General committees determine when select committees shall be chosen.

Notices.

Where notice that the seat is vacant, or that the sitting member does not defend his return, is given to the general committee, the committee shall suspend the proceedings till twenty-one days after notice in the *Gazette*, unless a petition of parties claiming to be admitted in the member's room be sooner referred to them, and by section 51, provision is made for cases where no party is admitted to defend.

When seat vacant or not defended.

The general committee may change the time for choosing an election committee, but must give notice in the votes of the change.

Time of choosing election committees altered.

The first clause of the statute 7 and 8 Vict. c. 103, repeals those parts of former acts which required the parties to interchange before committees, lists of voters, and statements in writing of the matters intended to be insisted on; and provided that no witnesses shall be called to any thing not specified in such lists or statements. The 54th section of the act in force, directs such lists to be delivered

List of voters objected to delivered to committee clerk.

(a) Sect. 47. 51.

(b) Sect 53.

to the clerk of the general committee, with the several heads of objection to each vote, six days before the time appointed for choosing the committee. They must be delivered not later than six o'clock on the sixth day before the choosing the committee, and are open to the inspection of all parties concerned.

Election committee chosen.

At the time appointed, the general committee choose *four* members from the panels next in the order of service (*a*). There are certain special grounds of disqualification which prevent members from being chosen on particular committees. No member may be chosen, 1st, who has voted at the election, or 2nd, who is the party on whose behalf the seat is claimed; or 3rd, who is related to the sitting member or adverse party by kindred or affinity in the first or second degree, according to the canon law. Each panel serves for a week, beginning with that first drawn, and not reckoning those weeks in which no election committee is appointed.

Disagreement in choice.

Unless four members, at the least, of the general committee, agree in the choice of an election committee, they must adjourn the choice of that,—and every other committee,—for that day; and must meet on the following day, and from day to day, until they agree; and the parties are directed to attend on each day. For if the general committee disagree in the choice of one committee, they may not proceed upon another, but are bound to choose every committee according to its order in the list, or to adjourn (*b*).

Parties to hear names read and to object to disqualified members.

As soon as the select committee is chosen, the parties are called in, and the names of the committee are read over to them, and they are allowed to object to the members chosen as disqualified or excused, for any of the reasons allowed by the Act, but not for any other reasons (*c*).

Members chosen served with notice.

When four members have been chosen, against whom no objection has been sustained, the clerk of the general committee gives notice in writing to each of the members, that he

(*a*) Sect. 55.
(*b*) Sect. 56.

(*c*) Sect. 60.

has been appointed to serve upon the election committee (a). The time and place of meeting are contained in the notice, and are also published in the votes.

At the time appointed, any member may establish his own disqualification. If no member appear within an hour; or, if appearing, he cannot establish his disqualification or excuse, the four members are appointed finally.

Members may shew own disqualification.

The four members being thus finally chosen, the chairman's panel notify to the general committee of elections, the name of one of the chairman's panel who has been selected by them as the chairman of the select committee. The general committee add this name to the other four, and communicate it to the parties interested: The parties are entitled to object to the chairman, on the same grounds as are permitted to be urged in the case of any other members (b).

Chairman's panel appoint a chairman.

Under the Grenville Act, each party, selected from the members whose names had not been drawn, one person to be the nominee of that party. Such nominees were expected to execute the incompatible functions and duties of advocates and of judges; but fortunately they always happened to agree in opinion with the party nominating them. The provision relating to nominees, was first left out of the consolidated, or as it was called, Wynne's Act, 9 Geo. 4, c. 22.

Formerly nominees selected by each party.

At the next meeting of the House, the five members attend in their places and their names are reported. They may not leave the House before the time for the meeting of the committee has been fixed; and before they leave, they must be sworn at the table by the clerk or clerk assistant—"well and truly to try the matter of the petitions referred to them, and a true judgment to give according to the evidence."

Select committee reported, and members sworn.

If any member should not attend within an hour after the meeting of the House, he is ordered into custody. If the absent member should not be brought in within three hours,

Or not attending, the swearing adjourned; or committee discharged.

(a) Sect. 63.

(b) Sect. 64, 65.

Meeting of
committee
fixed by the
House.

Time.

Place.

If chairman
dies or cannot
attend, how
place supplied.

Committees to
sit daily.

What special
causes of
adjournment
admitted.

the swearing of the committee is adjourned; and in certain specified cases, the committee is discharged.

When all the members have been sworn, the House refers the petitions and lists of voters to the committee, and orders them to meet at a certain time, within twenty-four hours of their being sworn, usually at eleven o'clock on the following morning in (the Act says) "some convenient room or place, "adjacent to the House of Commons;—properly prepared "for that purpose" (*a*).

On the meeting of an election committee, the chairman appointed by the chairman's panel, takes the chair at once without any question. If he should die, or be unable to attend;—by a provision of the statute, the remaining members of the committee, elect one of themselves to be chairman, and in case of an equality of votes, the member whose name stands first in the list of the committee, as reported to the House, is entitled to a second or casting vote (*b*).

Every such select committee is, by express enactment, to sit from day to day, (Sunday, Christmas-day, and Good Friday, only excepted); and shall not adjourn for a longer time than twenty-four hours without leave first obtained from the House, on motion, and assigning a special reason for a longer adjournment. When the House has been adjourned for more than twenty-four hours, and a committee have occasion to apply, or report to the House, they may adjourn to the day appointed for the next meeting of the House (*c*).

Among the special causes for adjournment, which have been allowed by the House, (the parties consenting,) are, the illness of a witness (*d*), and a summons for a member to attend a court martial. So, leave has been given to adjourn for the Easter holidays (*e*); over a day appointed for a general fast, and for his Majesty's birth-day. A committee has also, by leave of the House, adjourned, in order to enable the parties to arrange a convenient mode of pro-

(*a*) Sect. 20.

(*b*) Sect. 74.

(*c*) Sect. 71.

(*d*) 1 Peck. 339.

(*e*) 2 Rogers, 88.

ceeding; probably, where it was expected, as proved the case, that the contest would be given up (*a*).

No member on a select committee, shall absent himself, without leave obtained from the House, or an excuse allowed at the next sitting for cause shown upon oath, and verified in case of sickness by the oath of his medical attendant.

Committee-man not to absent himself.

A member so excused, is discharged from all further attendance, and not allowed to sit and vote again on the committee.

Discharged for illness.

If all the members do not attend a committee,—after waiting an hour (*b*), the committee must adjourn, and the chairman reports such adjournment, and the cause of it to the House. Every member absent without leave or excuse, is directed to attend the House at its next sitting, and will be taken into the custody of the Serjeant-at-Arms, or otherwise censured at the discretion of the House, unless he can shew by facts verified upon oath that his attendance was prevented by sudden accident, or necessity.

Committee not to sit, till all meet.

A committee is not to be “dissolved by the death or “absence of one member or two members thereof only;” but the remaining members shall thenceforward constitute the committee. But if reduced to less than three members the committee shall be dissolved (*c*). If all parties consent in writing, the committee may proceed with any number of members.

Reduced in number; and when dissolved.

Every committee is attended by a shorthand writer appointed by the clerk of the House, and sworn by the chairman to take down the evidence faithfully (*d*).

Attended by shorthand writer.

Every election committee has power to send for persons, papers and records; and the witnesses are examined upon oath, which the clerk of the committee is, by the act, empowered to administer. If any persons summoned, disobey the summons, or if witnesses give false evidence, or prevaricate, or misbehave themselves, the chairman reports the same to the House, and may, by a warrant under his hand, commit a witness to the custody of the Serjeant-at-Arms for any time not exceeding twenty-four hours, if the House be

Witnesses examined upon oath.

(*a*) Carmarthenshire case, 1 Peck. 294.

(*b*) Sect. 72.

(*c*) Sect. 75.

(*d*) Sect. 76.

then sitting; and if not, then for a time not exceeding twenty-four hours after the hour to which the House is adjourned.

False evidence
to be perjury.

The act attaches to false evidence the penalties of wilful and corrupt perjury, in addition to the imprisonment which the House inflicts *proprio vigore*; consequently, the House of Commons may direct the Attorney General to prosecute the offending witnesses (*a*).

Confined to
objections in
lists.

The committee cannot receive evidence against the validity of any vote not included in the lists of votes, and are confined to objections particularized in the lists.

Majority
decide.

Every such select committee, shall try the merits of the return or election, and shall determine by a majority of votes, and whenever the voices shall be equal, the chairman shall have a second or casting voice, having before given his vote like any other member (*b*). The names of members voting in the affirmative and in the negative upon every question shall be entered in the minutes and reported to the House.

Chairman's
second vote.

Closed doors.

Whenever the committee think it necessary to deliberate upon any question, the room may be cleared whilst they consider the matter (*c*).

Decisions of
committee.

The points for the determination of the committee and those which they are expressly to decide, are, 1, whether the petitioners or the sitting members, or either of them, be duly returned or elected; or 2, whether the election be void; or 3, whether a new writ ought to issue. Their determination upon these points is final between the parties, and the House, on being informed of it, enters the report in their Journals, and gives the necessary orders for carrying the determination into execution (*d*).

Special reports.

If a select committee come to any resolution other than this determination, they may report it to the House, for their opinion, at the same time that they inform the House of the determination. The House may confirm or disagree with such resolution, or make whatever order, it thinks proper. The most frequent subject of a special report is the bribery proved to have been committed at the

Bribery.

(*a*) 75 Com. J. 332.

(*b*) By sect. 84.

(*c*) Sect. 83.

(*d*) May, 365.

election. An act of bribery, disqualifies a man from sitting in the House of Commons during a whole Parliament, and if proved before a committee, they come to a determination that his election was void, and add to their report, a special resolution concerning the bribery (a).

Formerly, the first and most difficult step in proving bribery, was to establish the agency of parties who were alleged to have committed bribery on the sitting member's or candidate's behalf. Until the agency was proved, it was usual for the committee to refuse to enter into general evidence of bribery; because it could lead to no result.

But now by an Act "for the prevention of bribery at elections," 4 and 5 Vict. c. 57, reciting "that the laws in being at that time, were not sufficient to hinder corrupt and illegal practices in the election of members;" it is enacted, "That whenever any charge of bribery shall be brought before any select committee of the House of Commons, appointed to try and determine the merits of any return or election of a member or members to serve in Parliament, the committee shall receive evidence upon the whole matter, whereon it is alleged that bribery has been committed; neither shall it be necessary to prove agency in the first instance, before giving evidence of those facts by which the charge of bribery is to be sustained; and the committee, in their report to the House of Commons, shall separately and distinctly, report the fact or facts of bribery, which shall have been proved before them, and also whether or not it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election."

Since the passing of this act, the seats of several members have been avoided by the acts of their agents; and committees have reported that sitting members have been, by or through their agents, guilty of bribery; and at the same time, that there was no evidence to shew that any acts of bribery were committed with their knowledge and con-

(a) May, 366.

Principle of
the late
decisions.

sent (a). The principle upon which such determinations have proceeded appears to be: *qui facit per alium, facit per se*. After receiving proof of general agency for the management of an election, the committees have held the principal civilly responsible for the illegal acts of the agent, and have, therefore, found and reported him guilty of bribery, "through his agents" (b).

Writs
suspended.

When general and notorious bribery and corruption have been proved to prevail in Parliamentary boroughs, the House have frequently suspended the issue of writs, with a view to further inquiry, and the ultimate disfranchisement of the corrupt constituency (c).

Election com-
mittees re-
assembled to
inquire into
bribery.

By the stat. 5 and 6 Vict. c. 102, if an election committee recommend further inquiry regarding bribery, the Speaker is required to nominate an agent to prosecute the investigation; and the committee are to re-assemble within fourteen days, and to inquire and report specially, concerning the bribery, and the parties implicated. The committee, when re-assembled, possess all their original powers of inquiry. By the same act, if charges of bribery be withdrawn, the committee are instructed to inquire into and report the causes of their abandonment. Special powers are also given to the House, in certain cases, to appoint election committees upon petitions complaining of bribery; and when election petitions have been withdrawn. But no such committee, whether re-assembled or appointed to investigate the matter of a petition presented after the time limited for receiving election petitions, can affect the seat of any member; or the issue, or the restraining the issue, of any writ.

Where charges
of bribery have
been aban-
doned.

Committee not
dissolved by
prorogation.

The proceedings of election committees are not determined by a prorogation (d). When an election petition is presented to the House before a prorogation, and a committee has not been appointed to try it, the general committee of elections, in the ensuing sessions, within two days of their first meeting, appoint a day for choosing a

(a) 97 Com. J. 268. Barron and Austin, 401.

(b) Barrow and Austin, 453. 584. 609.

(c) Stafford, Com. J. 90; Sudbury, 97, ib.; Ipswich, ib. 221.

(d) Sects. 86, 87.

committee, if in the mean time the sureties have been reported unobjectionable. And when Parliament is prorogued after the appointment of an election committee, and before they have reported their determination, the committee are not dissolved, but only adjourn until twelve o'clock on the day following the meeting of Parliament for the dispatch of business. In the ensuing session they resume their sittings, as if there had been no prorogation; their former proceedings are valid, and they continue subject to the ordinary rules of election committees.

The 19th section of the 53 Geo. 3, c. 71, reciting that doubts had arisen as to the authority of an election committee to examine as witnesses, any persons who might have subscribed the petition, to try and determine which the committee had been appointed, declares that it shall be lawful to examine such subscribers, unless they shall otherwise appear to be interested witnesses.

Witnesses who have subscribed the petition.

By section 27 of the Grenville Act (*a*), whenever the committee think it necessary to deliberate amongst themselves, upon any question arising in the course of the trial, or upon the determination of it, or upon any resolution concerning the matter of the petition referred to them; so soon as the committee shall have heard the evidence and counsel on both sides, they shall, if they think proper, order the room or place in which they sit to be cleared; and all such questions, determination, and resolutions, shall be by a majority of voices; and if the voices are equal, the chairman shall have a casting vote. By that act no member had a vote on such determination, or any other question or resolution, who had not attended during every sitting of the select committee.

Committee deliberate in private.

By stat. 28 Geo. 3, c. 52, (*b*) it was first provided that every committee, at the time they reported to the House their final determination on the merits of the petition they were sworn to try, were also to report to the House whether such petition did or did not appear to them to be frivolous or vexatious; and they were, in like manner, to report with respect to every party or parties who should have appeared

How vote.

Who voted under Grenville Act.

To their determination, shall add whether petition frivolous or vexatious.

(*a*) 10 Geo. 3, c. 16.

(*b*) Sect. 18.

Whether
opposition the
same.

Whether re-
turn vexatious
or corrupt.

before them in opposition to such petition, whether the opposition of such party or parties respectively, did or did not appear to them to be frivolous or vexatious; and if no party appeared before them in opposition to such petition, they were then to report whether such election or return, or such alleged omission of a return, or such alleged insufficiency of a return, appeared to them to have been vexatious and corrupt. By the 2nd section of 53 Geo. 3, c. 71, if any ground of objection should be stated against a voter in the lists required by that statute to be delivered to the clerk of the House of Commons, and no evidence were produced before the committee to substantiate such objection, and if the committee should be of opinion that such objection was frivolous or vexatious, they would report the same to the House, together with their opinion upon other matters.

Costs.

The effect of these reports of committees was to give costs to the successful party. For this object no provision was made before the 28 Geo. 3, c. 52 (*a*), though the House had before passed resolutions in particular cases, to reimburse the party petitioned against, where the petition was found to be frivolous or vexatious.

Who entitled
to receive.

By that Act, and by the 7 and 8 Vict. (*b*) now in force, whenever a committee have reported a petition to be frivolous or vexatious, the party or parties, who have appeared in opposition to it, shall be entitled to recover from the party or parties, or any of them, who have signed such petition, the full costs and expenses which they have incurred in opposing it. And whenever the committee shall report to the House the opposition to the petition to have been frivolous or vexatious, the parties who have signed such petition shall be entitled to receive their full costs and expenses from the party or parties who have made the opposition. And where no party has appeared in opposition, and the committee have reported, with respect to the election or return, or to the alleged omission of a return, or to the alleged insufficiency of a return, that the same appeared to them vexatious or corrupt, the persons who

(*a*) Sect. 18.

(*b*) c. 103, s. 88, *et seq.*

signed such petition shall be entitled to recover, from the sitting member or sitting members, (if any), whose election or return shall be complained of in the petition, such sitting member not having given notice of his intention not to defend the same, or from any other person whom the House shall have admitted to be made a party to oppose such petition, the full costs and expenses incurred in prosecuting such petition.

When any objection stated to a voter in the list, is reported to be frivolous, the opposite party may recover costs from the party by whom, or on whose behalf, the objection was made. And if either party should make, before any election committee, any specific allegation with regard to the conduct of the other party or his agents, and should either bring no evidence in support of it, or only such evidence that the committee consider the allegation to have been made without any reasonable or probable ground, the committee may order the party who made it to pay all the costs and expenses incurred by the other party, by reason of the unfounded allegation.

The costs and expenses of prosecuting or opposing, or preparing to oppose, election petitions, or payable to witnesses summoned before committees, are ascertained in the following manner:—Within three months after the conclusion of the proceedings, on application made to the Speaker of the House of Commons, he directs the same to be taxed by the examiner of recognizances. The examiner taxes them, and reports to the Speaker the amount due, the names of the parties liable to pay and entitled to receive them; and the Speaker, on application made to him, delivers to the party a certificate signed by himself, expressing the amount of the costs and expenses allowed, which is conclusive evidence of the title of the parties to recover those claims (a).

How ascertained.

The mode in which the costs so ascertained may be recovered, is by an action of debt, in any of his Majesty's Courts of record at Westminster, or Dublin, or the Court of Session in Scotland, in which action it shall be sufficient

How recovered.

(a) Sect. 93.

for the plaintiff to declare that the defendant is indebted to him in the sum mentioned in the certificate (*a*). The filing of such declaration, together with the Speaker's certificate, and an affidavit of demand, entitles the plaintiff to sign judgment as for want of a plea, and to take out execution for the sum, and for the costs of the action. The validity of the Speaker's certificate may not be called in question in any Court.

Formerly costs as between attorney and client ; now full costs.

The 53 Geo. 3, c. 71, s. 10, directed that in all cases the persons authorized by the Speaker of the House of Commons to tax the costs and expenses, should allow all reasonable costs as between attorney and client. The expression used in the stat. 7 and 8 Vict. c. 103, is always full costs and expenses.

Contribution between those paying costs.

Where the amount of such costs has been recovered from any one person or persons, such person or persons may recover a proportionate share thereof, from any other persons liable to the payment of the said costs and expenses (*b*). Where there are separate petitions, the costs must be taxed separately. The persons authorized to tax costs are also empowered to take affidavits, (as are also any Master of the High Court of Chancery, or any of his Majesty's justices of the peace), relative to such costs, expenses, or fees, or the taxation or non payment thereof, and to administer the oath for taking such affidavit (*c*); and any person convicted of wilfully false swearing in any such affidavit, shall be deemed guilty of perjury.

Who may take affidavits.

When voted frivolous and vexatious.

Petitions have been voted frivolous and vexatious, when the law was too clear to admit of doubt or mistake ; when the right claimed was in opposition to a well-known determination of the House ; and when the petitioners, after having commenced their case, abandoned the petition, assigning no sufficient reason for withdrawing. The opposition made to a petition by a person in possession of the seat, has been rarely reported frivolous or vexatious.

To avoid the inconvenience and exposure of examining witnesses from Ireland, a committee appointed for the trial of a petition complaining of an election in Ireland, are

(*a*) Sect. 95.

(*b*) Sect. 96.

(*c*) Sect. 94.

empowered, on the application of any of the parties, to appoint a commission to take evidence in Ireland.

Commission to take evidence in Ireland, what and when granted.

The granting a commission to take evidence, in Ireland, is entirely discretionary with the committee, who are empowered to make an order for the nomination and appointment of commissioners, where, from the nature of the case and the number of witnesses to be examined, they think the allegations cannot be effectually inquired into before them, without great inconvenience and expense to the parties. Application for it may be made at any time during the course of the proceedings, but notice must be served on the opposite party as soon as the petition is presented. The mode of appointment (of two barristers of six years' standing, and a chairman, also a barrister, of like standing, as commissioners), is prescribed by statutes (*a*). When the commissioners are appointed, the chairman of the committee addresses to the chairman of the commissioners a copy of the petition, the lists and statements, together with the order of the committee specially assigning and limiting the facts respecting which the commissioners are directed to take evidence, and all documents which the committee think proper to refer.

The committee report these proceedings to the House, and ask permission to adjourn till they are re-assembled by the Speaker's warrant. They are also to state that they have gone through all the other parts of the petition except those which have been specially referred to the commissioners.

The commissioners have power to send for persons, papers and records, and to examine witnesses on oath, but they must not suffer counsel to attend before them. Within ten days after the evidence is closed, or with all convenient dispatch, assigning reason for the delay, (of which the committee, when re-assembled, are to judge and report), the commissioners are required to cause two copies of the minutes of proceedings and evidence to be made, and to transmit one to the clerk of the Crown in Ireland,

(*a*) 42 Geo. 3, c. 106, s. 8, 9; 47 Geo. 3, sess. 1, c. 14, s. 5; 60 Geo. 3, c. 7.

and the other to the Speaker, who communicates it to the House.

If the commissioners object to any evidence offered, they are to state in writing the grounds of their objection. Evidence taken, subject to objections, is transmitted separately, and if its production be voted frivolous and vexatious, the party who produced it, is liable to costs.

When the committee have re-assembled under the Speaker's warrant, they form their determination from the written minutes, but they may hear counsel as to the effect of the evidence.

Recognizances
when estreated.

The recognizances entered into by the petitioners, may be estreated, if they neglect or refuse to pay to any witness, for the space of seven days after demand, any sum certified by the Speaker to be due to such witness; or 2ndly, if such petitioners shall neglect or refuse to pay any party opposing the petition, the sum certified to be due to such officer or party. The neglect or refusal must be proved to the satisfaction of the Speaker, within one year after this certificate is granted, by affidavit sworn before a Master in Chancery. In case of such default, the Speaker certifies the recognizance into the Court of Exchequer, which has the same effect as if the recognizance were estreated from a Court of law (a).

It remains only to speak of the procedure, the course and practice of election committees.

Course and
practice of
committees.

The regular (b) course for every committee to pursue is, first, to call upon a petitioner to make out his case: if he make out a sufficient case, then to call upon the sitting member to answer it, and make out his own. A petitioner must establish the truth of his own allegations. When, therefore, a sitting member withdraws, a committee will require a petitioner to prove his majority; but that only; that he was duly elected by a majority of legal votes.

Preliminary
objections.

If there are any objections to the right of the petitioner to complain in the case, or to the manner of getting up or presenting the petition, objection may be taken by the

(a) Sect. 97.

(b) 1 Peck. Introd.

sitting member to the petition being proceeded upon. Objections to the form of the petition have been allowed to be taken at a later period.

Two counsel only on each side, are in strictness to be allowed to be heard before an election committee, or before the "committee of privileges and elections;" if they be identical, or if such last mentioned committee be in existence. By a standing order of the House of 3rd June, 1701, it is ordered, that "it be an instruction to the committee of "privileges and elections, that they admit but two counsel "of a side in any cause to be tried before them, and the "same two, only, shall be heard on one day."

What counsel heard.

One counsel only on each side, is usually heard upon incidental points.

But though such ought to be the case where the points in issue are the same, yet where the interests of the parties are essentially different, they will be allowed to be heard by separate counsel; as in cases of petition from electors and candidates, the objects of which are different; but only one *reply* is permitted in such cases. So, where the conduct of a returning officer is complained of in the petition, he has been admitted to appear by counsel, and to be heard as a separate party; but not, where the parties are substantially implicated in the same criminal charge of bribery (a).

The first step before the committee, is the reading the petition by the clerk; then, the last determination of the House upon the right of elections; and then, the standing order of January 16, 1735: "Ordered, That the counsel at "the bar of this House, or before the committee of privileges "and elections, be restrained from offering any evidence "touching the legality of votes for members to serve in "Parliament for any county, shire, borough, cinque port, or "place, contrary to the last determination of the House of "Commons, which determination, by an act passed in the "second year of his Majesty's reign, intituled, 'An act for "the more effectually preventing bribery and corruption in

Commence-
ment of trial
before com-
mittee.

Last deter-
mination read.

The standing
order making
determination
final.

(a) Camelford case, Corbett and Daniell, 252.

“ the election of members to serve in Parliament, is made
 “ final to all intents and purposes whatsoever, any usage to
 “ the contrary notwithstanding.’ ”

Opening the
 case.

The counsel for the petitioners then proceeds to open the whole of his case in the most large and general way, so as to let in as much evidence as possible. Where there are several questions, the cases are sometimes separated, and considered distinctly; and this is done not by any certain or general rule, but as justice and convenience require, in each particular case.

Exclusion of
 witnesses.

It is a general rule that all witnesses, who are to be examined before an election committee, are excluded from the room while other witnesses are under examination, and if, when called, they prove to have been present, their evidence is not admitted. Agents and barristers are exceptions to this rule; and others, in special cases, are sometimes allowed to be examined, although they have been present.

Notice thereof.

The notice of this rule to all concerned, is, or was, marvellously confused and strange, and resembled arguments that prove too much; it consists of a paper affixed to the door of every committee room, stating that “ No
 “ witnesses are admitted!”

Rules of
 evidence.

By the practice of committees (a), a witness produced for a particular purpose is not to be subjected to a general cross-examination: in other respects, the rules of evidence in the courts of law are observed. The minutes taken by the shorthand writer are copied for the agents on both sides, and delivered out daily to them by the clerk. Whilst the case proceeds, they are in the power of the committee, and may be amended by consent.

Minutes of
 evidence.

Decision on
 oath.

According to this evidence of sworn witnesses, the five members of the select committee, agreeably to the solemn oath taken by them in the House, give a true judgment, deciding by a majority.

(a) 2 Starkie's Reports, 472.

CHAPTER VI.

The Proceedings continued till the Period when the Bill receives the Royal Assent—and incidentally, of Conferences, Amendments, and the Rules and Precedents in the case of Bills of Supply—Of the Preliminary Proceedings and Distinctive Differences in the passing of Private Bills—In what House Bills originate according to their Subject Matter—Of Preparing and Settling Private Bills—Proper Clauses—Approved Precedents—Of Parliamentary Agents—Fees and Costs—Conclusion.

WHEN the House hath agreed or disagreed to the amendment of the committee, and sometimes added new amendments of its own, the bill, thus committed, reported, and agreed to, is then ordered to be ingrossed on one or more long rolls or presses of parchment sewed together; unless it were transmitted from the other House, where the ingrossment has already taken place. Bills of grace, in like manner, “which cannot be amended or added to,” come to the House ingrossed on parchment, and signed by the King (*a*).

Ingrossment of bills.

Another opportunity is afforded of debating the bill, upon the question whether or no it be the pleasure of the House that the bill, thus amended, should be put to the question for ingrossing; “for,” says (*b*) Hakewill, “it is as free for any man to speak against the bill at this time, though it hath passed the approbation of the committee, as it was at the second reading, before the same was committed.”

“The object in ingrossing bills,” say the Lords in 1836, “is to preserve an uniform, durable, and correct record of

(*a*) D'Ewes. 10.

(*b*) The passing of bills, 160, Hakewill.

“ the acts of the Legislature, which shall be legible at a
“ distant period” (*a*).

In the Lords, the ingrossment of all bills is confided to the “clerk of ingrossments:” in the Commons, all bills, which have not already been ingrossed in the Lords, are ingrossed after the report, in the “Ingrossing Office;” and examined in the “Public Bill Office;” the offices of which, are immediately responsible for their correctness.

Third reading.

The bill may now be read a third time. On the third reading, the judgment of the House is expressed upon the entire bill, as it stands, after all the amendments introduced in committee ; and on the report,—or further consideration of the report.

A bill that originated with the House of Lords, is usually read a third time in the House of Commons the same day it is reported. As respects some descriptions of bills that have their commencement in the Commons, before the ingrossment is laid on the table, certain requisites must be complied with (*b*).

Amendments
after.

Amendments may still be made by the House to any part of the bill, but it is advisable to do this as early as possible, on account of the trouble of amending the ingrossment. Clauses also may be added to it at this stage ; but new clauses, whether offered on the report, the further consideration of the report, or the third reading, should be proposed before the amendments are made to the bill ; because the addition of a new clause may make it necessary to introduce amendments in other parts of the bill (*c*). The proper time for proposing a clause is, after the bill is read the third time.

Question for
passing.

After the bill is read a third time, the clerk delivers it to the Speaker, who reads the title and opens the effect of the bill, and tells the House, “ That the bill hath now “ been thrice read, and, with their approbation, he will put “ it to the question for passing ;” but then pauses to give liberty and opportunity to speak to it.

(*a*) Com. J. 447.

(*b*) O. H. C. 5 June, 1840.

(*c*) May, 286.

When the debate is ended, the Speaker still holding the bill in his hand, makes the question for the passage in this sort: "As many as are of opinion that this bill should pass, say Aye," &c.

If amendments are meant to be proposed at this stage of the bill, they must be prepared in paper, with reference to the presses and lines in the ingrossment where the alteration (be it omission, addition, or change,) is required to be made; but if a new clause is sought to be added, it must be ingrossed on parchment, with proper blanks, and if accepted, it is tacked on the bill and called a rider (*a*). Amendments.
New clauses.

The statement in Hakewill, of the method of proceeding in such cases is, in no ordinary degree, exact and perspicuous. "If any man will offer a clause or *proviso* to a bill originally begun in the Commons, it ought to be offered in paper, as long as the bill itself is not ingrossed, but when the bill is once ingrossed, it ought to be offered in parchment, and not in paper. If offered at the first reading, it is read over and filed to the bill; if at the second, it is read twice, and committed together with the bill; and if at the third reading, the bill being ingrossed, it ought to be read three times, before the question is put for the passage of the bill; and the question ought to be made whether or no the House doth think fit to annex the clause or *proviso* to the bill read: which question ought to be made singly upon the clause or *proviso*, and afterwards the question ought to be made for passage of the bill together with the *proviso* annexed. If passed, the clerk should sign, *Soit baillé aux Seigneurs avecque un proviso annexe* (or *avecque un Schedule annexe*). If a *proviso* or schedule be offered to any bill coming from the Lords, at the first or second reading, it must be in paper, though the bill be a bill ingrossed. After the committee, it ought to be a special question made by the Speaker, whether the *proviso* shall be ingrossed. If carried, he Riders.

(a) Noy. 84.

“ought to deliver it to be ingrossed; and some other day
“put the question upon the passage” (a).

If the clause proposed to be added to the bill have for its object to impose a pecuniary fine, the House will never entertain it with the Speaker in the chair. To fill up the blanks in such case, the clause must be read twice, and then committed to a committee of the whole House; after which, the Speaker resumes the chair, the clause is reported, read a third time, and agreed to.

Recommitted
only for par-
ticular clause.

It is laid down as settled doctrine, that no bill upon the third reading, for the general matter or body thereof, may be recommitted; but for some particular clause or *proviso*, it has been sometimes suffered; and that difference was taken for a rule, 4th May, 1610. “In the third session
“of the first Parliament of King James 1, 12 *die Maii*,
“the bill of clothing being ingrossed and read the third
“time, exception was taken to the last *proviso* thereof (b);
“whereon, after much debate, it was recommitted; which,” says Hakewill, “is to be observed as a thing unusual after
“the third reading. The next day it was returned again
“by the committee, with their opinions that they held it
“fit that a *proviso* therein should be struck out; whereupon
“the question grew, whether the *proviso*, being put to the
“question alone, and rejected, the whole bill would not
“be dashed thereby? at last resolved, No.”

Passing the
bill.

The clause or amendment being agreed to, the Speaker again opens the contents, and holding it up in his hands, again puts the question, whether the bill shall pass? This question has sometimes passed in the negative, after all the preceding stages of the bill have been agreed to; but it is not usual to divide upon it.

Title.

If the question “that this bill do pass” be assented to, the TITLE to it is then settled. For the last question to be determined is: “That this be the title of the bill;” which is accordingly read by the Speaker. It is competent to any

(a) Hakewill, 149.

(b) The passing of Bills, 156.

member to propose a new title different from that which is indorsed on the House copy. In such case, the new title should be written on a sheet of paper, and laid upon the table with the ingrossed bill; and in the case of private bills, the member who has the care of the bill in the House should be requested to propose that such new title be the title of the bill, or rather, "that the bill do now pass, and that the title "be," &c. The title, it has before been intimated in the first chapter, used, in more ancient times (*a*), to be a general one for all the acts passed in the session; till, in the fifth year of Henry 8, distinct titles were introduced for each chapter. Among the regulations of the House of Commons, occur the following, not considered applicable to private bills. The precise duration of every new temporary (*b*) law is required to be expressed in the *title* of the bill, and, also in a distinct clause at the end of the bill and nowhere else; and every bill for the revival of several statutes, or for the continuance of several statutes, must express in its *title*, that the same is for reviving or for continuing the several statutes therein mentioned; and must describe in its *title* every such statute, by its year, chapter, and day of passing, together with the precise duration to be given thereto. Bills coming from the Lords ought to have their *title* ingrossed upon the back of the bill, and not within it; in defect whereof, divers bills coming from them, have been returned to be amended (*c*).

Title indorsed
on bills from
the Lords.

When a bill is thrice read and passed, there ought to be no further alteration thereof in any part. Nevertheless, if there should turn out to be any palpable mistake from clerical errors, "false writing, or otherwise," the House, upon notice thereof, hath caused the same to be amended the day following, and, reading the amendment three times, have again passed the bill upon the question; which (*d*), says Hakewill, "is a rare precedent, yet was it so done,

After passing,
clerical errors
amendable.

(*a*) Bacon on Uses, 326.

27 May. 39 Eliz. 24 October.

(*b*) O. H. C. 17 Nov. 1797.

(*d*) Hakewill, 154.

(*c*) 27 Eliz. 19 Dec. 13 Eliz.

“ 20 January, 25 Eliz., Popham being Speaker; which is a memorable case.”

When a bill is passed by the Commons, the clerk, or clerk assistant writes within the bill, at the top, *soit baillé aux Seigneurs*, or where a bill is passed by the Lords, it is indorsed *soit baillé aux Communes*. The next step is to communicate the bill to the other House.

Where bill originates in Lords, how sent to Commons.

A bill originating with the Lords, after it has been read three times and passed, is transmitted to the Commons by two Masters in Chancery, or where it concerns the Crown or Royal Family, or upon matters of high dignity and importance, by two of the Judges; who, upon being admitted into the House of Commons^(a), “after three *congées* at the table, inform the House that the Lords “have passed such a bill, and desire their concurrence,” and then read the title. When the Judges are on circuit, one Judge and a Master in Chancery, or two Masters in Chancery are sent. They ought to deliver the bill in the body of the House. A delivery to the Speaker elsewhere, would be regarded as improper and unparliamentary^(b); and it is said, that, where a Speaker meeting the assistants at the door on his entry into the House, received a bill from their hands, and took it and delivered it to the House, it was returned to the Lords.

If the bill, originally begun in the Lords, passes the Commons, then ought the clerk of the House of Commons to write underneath the subscription of the Lords, *a cet bill les Communes sont assentus*.

Where begun in Commons, transmission to Lords.

The Commons send up bills by a member (generally the chairman of Ways and Means, or the member who has had charge of the bill;) who is directed to carry it to the Lords and desire their concurrence.

On the same, or some subsequent day, such member, attended by seven other members at the least, (it being the rule and practice of the Lords to receive no message from the Commons unless eight members attend with it,) carries

(a) D'Ew. 45.

(b) D'Ew. 688.

it to the bar of the House of Peers, and there delivers it to their Speaker, who comes down from the Woolsack to receive it. In the Parliament, *an. 31 Eliz. (Mar.)* a private bill for the relief of one Thomas Haselridge being passed the Commons' House, was sent up only with four or five messengers; to which the Lords taking exception, returned the bill, saying, they had cause to doubt, it passed not with the general consent of the House, because it came not graced with a greater number; and left it to the consideration of the House to send it back in such sort as was fit.

Many times, says Hakewill, (*a*) the House, with a purpose specially to grace one bill, sendeth it alone, without other bills—sometimes with a special recommendation thereof. The messenger for this purpose, when the bill is popular, is usually attended by thirty or forty of the House, as they please and are affected to the business.

To grace some bills sent alone.

When a convenient number of bills, “as five, or six, or thereabouts” has been sent at the same time, by the Commons to the Lords, the following order is said to have been formerly observed in ranking them (*b*): First, were placed those bills that came originally from the Lords; secondly, those which having been sent up to the Lords from the Commons were sent back to be amended; thirdly, public bills that had originated with the Commons, marshalled according to their degrees of consequence; lastly, private bills, in such order as the Speaker pleased.

With bills.

Order in which sent.

A bill is usually read a first time in the House of Lords the same day that it is brought from the Commons, and having passed through the different stages,* with all the same forms as in the other House, except ingrossing, (which is

Proceedings in the Lords, when brought up.

(*a*) P. 176.

(*b*) Hakewill, 175.

* In *Lex Parliamentaria* is the following note, for which Hist. Reform, vol. 1, p. 144, is cited: “A bill was read in the House of Lords four times, *quære*, if in one day?” The standing orders of the Lords must be suspended, for a bill in the Upper House, to pass more than one stage in a day. Yet, on pressing emergencies, bills have frequently passed through all the stages on the same day, in both Houses.

already done;) the Lords send a message in the manner before stated, to inform the House of Commons that they have agreed to the same without amendments; and the bill remains with the Lords to wait the royal assent. This is the practice where they have made no amendments. But if any amendments are made, such amendments are sent down with the bill, to receive the concurrence of the Commons. If the bill is rejected, no more notice is taken, but it passes *sub silentio*, to prevent unbecoming altercations (a).

If a bill be returned from one House to another, with amendments, those amendments must either be agreed to, or agreed to with amendments, or if not, the amendments sent down with the bill, must be waived, otherwise the bill will be lost.

How amendments sent to other House.

Amendments in ingrossed bills by either House are written in a separate paper, with a reference to the lines in which the alteration is required to be made. “*Anno 29 Eliz. 25 December*, the bill touching labourers, passing “first from the Commons’ House, was sent from the Lords “with amendments in parchment, and the parchment formally indorsed *soit baillé aux Communes*: to which exception “being taken, there was much contention about it between “the Houses, and precedents sought up; and at last resolved “it ought to be in paper, without any indorsement at all (b); “otherwise it is, where there is a schedule of additions, or a “*proviso* annexed, for *they* ought always to be sent in parchment. The Journal-book in this place, handleth the point “at large.” A new clause or *proviso* is correctly ingrossed on parchment, tacked to the bill, and transmitted with this subscription: (c) *a cesty bill, avecque le schedule ou provision a mesme bill annexe, les seigneurs sont assentus*.

Amendments made by themselves.

When a bill with amendments is returned to the other House, the bill is not read again, but a member moves that the amendments made by the Lords to the bill be

(a) 1 Bl. Comm. 183.

(b) Hakewill, 164.

(c) D'Ew. 26, 576.

taken into consideration. If a bill with amendments is returned by the Lords, and the amendments are agreed to by the Commons, the bill is amended by themselves. "For amendments ought always to be in that House from whence the thing to be amended originally proceeded, though the directions for the amendments came from the other House"(a). If the Lords, for explanation of a sentence in question, do add words to the additions of the Commons, without putting out any part of what is required to be added or altered by the Commons, the same being set down in writing by the Lords, and sent to the Commons, together with the bill, if the Commons allow thereof, they are to add the words required by the Lords' paper, and to insert the same in their own paper, and so return the same to the Lords. The like in all points, *mutatis mutandis*, in bills originally begun in the Commons' House, and sent to the Lords: but if to the bill coming from the Lords, any *proviso* or entire new matter be added by the Commons (because it is adjudged a new bill, and hath not been at the question in both Houses,) the Lords may by their paper require to have part thereof put out, or may offer additions thereto; which being returned to the Commons, and they giving allowance thereof, they are accordingly to amend the same in their own House, without sending it back to be amended by the Lords.

It is held for a general rule, that neither House may, of themselves, put out anything which *they* have before passed, otherwise than requested by the House which hath not passed the same. The rule seems much the same with interpolations and additions. But it admits of this qualification: unless such proposed amendment of what they have already passed themselves, be immediately consequent upon amendments of the other House, which have been agreed to, and are absolutely necessary for carrying them into effect.

Amendments
of each other's
bills.

Consequential
amendments.

(a) Hakewill, p. 166.

An. 27 Eliz. 5 Feb.—The Lords having made some additions to a bill passed from the Commons' House, the Commons prayed leave to make a further addition to their own bill, or that the Lords would be pleased to supply the same with an addition of theirs; which the Lords refused to do, because they found no such precedent. But, *an. 25 Eliz. 31 Mar.*—The bill against Popish Recusants, first passing from the Lords, was returned with amendments, which the Lords assented to, and sent down the same again amended by them accordingly; and also a *proviso* annexed thereto, to be passed if the House should think good, which was yielded to; and the *proviso* being thrice read, was, with the bill, passed accordingly, 6 April. This is a very remarkable precedent: that a proviso should be added by them who first passed the bill, and not to have any reference to any alteration or amendment inserted by direction from the other House (*a*).

A bill being amended and agreed to by the Commons, is then returned to the Lords by one of the members, with a message to acquaint their Lordships therewith. According to the ancient course and method of transactions between the two Houses, when a bill with amendments is sent from either House to the other, by messengers of their own, the House that sends them gives no reason for their amendments; but the House to whom it is sent, if they find cause to disagree, do use to give reasons for their dissent to every particular amendment; every one of which is supposed to carry with it its own reason, till it be objected against (*b*). If one House do not approve the amendments of the other, it cannot reject them; it must suffer the bill to drop, unless it agree to it with the amendments, or it may put off the consideration of the amendments for six months (beyond the probable duration of the session). But if there still exist a hope of compromise, any prospect of an ultimate agreement of the two Houses, a conference usually follows

(*a*) Hakewill, 173.

(*b*) Commons' Reasons, 19 March, 1677.

between members deputed from each House, who for the most part settle (a) and adjust the difference; still, if both Houses remain inflexible, the bill can proceed no further. In the Parliament 31 *Eliz.*, when Mr. Snagge was Speaker, it was usual, when either House desired the clear passage of any bill sent unto them from the other House, in which they thought fit to make alterations, to acquaint the House from which it came, with the alterations which they *intended* to make; and to desire to know their willingness thereto; to prevent the hazard of the bill, if, perhaps, they should make alterations not approved of.

In the bill against vagabonds, 13 *Eliz.*, it was resolved, “that certain words required by the Lords to be put out, “should not be put out of the bill, but stayed still in the “same, qualified with other words; with condition that if “the Lords should not agree to the said qualification, the “House would not be bound by the said resolution:” which was “done of purpose, to avoid the hazard of the bill, in case “the Lords should not agree thereto.” In like sort they sometimes used conferences, only to prevent the casting away of bills, from some small difference about the amendments (b).

A conference is usually desired by the House whose bill has been altered, to assign the reasons for their disagreement with the proposed alterations (c). And this is done in order, that after considering those reasons, the other House may be induced not to insist upon their amendments, or may, in their turn, establish such grounds for having proposed them, and urge such considerations, reasons, and arguments in their favour, as may prevail upon the other House to agree with them. More frequently the House proposing the amendments, is induced to alter and modify them. *An.* 23 *Eliz.*, 24 *Martii*, in the bill for the better government of Westminster, the Commons, at the request of the Lords, do alter their own amendments. The

Conferences
between the
two Houses.

(a) 1 Bl. Comm. 183.

(b) Hakewill, 168.

(c) 4 Hats. 49.

like is done by the Lords, at the request of the Commons, in the bill of hostile laws, 3 *sess.* 1 *Parl. Jac. Reg.* 29 *Junii.* So 23 *Eliz.*, 17 *Martii*, the Lords amend the sense of some of their amendments, and then their amendments are considered, allowed and returned.

By whom
demanded, and
on what
account.

A conference upon the subject of a bill depending between the two Houses, must be demanded by that House which, at the time of asking the conference, is in possession of the bill. Its occasion and purpose (as relates to alterations in the bill) have been already stated. It cannot be had, for the purpose of demanding the reasons of the other House for bringing in, amending, or refusing to agree to, any bill; which, in (a) Lord Stourton's case, was declared to be irregular.

It will be refused, by the Lords, in any case where it is supposed to involve the question of their jurisdiction. On the 28th May, 1675, the Lords answered the Commons, that when the whole matter concerns the judicature of the Lords, they can admit no debate, nor grant any conference. They had before (b) protested, that "the conferring with the House of Commons, upon a matter only relating to the manner of proceeding in judicature, is a great derogation to the privileges of the Lords." And, 25 February, 1702, they order their managers, that they be restrained not to permit the Commons to dispute the Lords' jurisdiction.

When, from inattention to the forms established upon this occasion between both Houses, either House has sent a message that they disagree to amendments, and has not desired a conference to assign their reasons for such disagreement, the bill has been redelivered; "to (c) the end," say the Lords, "that the due course of Parliament, in the transmitting of things of this nature, may be observed."

If the House which amend the bill are not satisfied and convinced, by the reasons assigned for disagreeing to the

(a) 1775, and before in 1661.

(b) 4 Feb. 1666.

(c) 10 May, 1662, but 20 Dec.

1680, the Lords were themselves guilty of the same irregularity.

amendments, but insist upon them, the form is to desire another conference; at which, in their turn, they state their arguments in favour of the amendments, and the reasons why they cannot depart from them. If, after such second conference, the other House persevere in disagreeing to the amendments, they ought then to demand a FREE CONFERENCE, at which the arguments on both sides may be more amply and freely discussed. If this measure (*a*) prove ineffectual, and, after several free conferences, both Houses remain inflexible, nothing further can be done, and the bill must be lost.

Second conference.

Free conference.

A conference is desired by the Lords, by their usual messengers, the Masters in Chancery. The Commons send one of their own members to demand it. It is the sole privilege of the Lords to name the *time* and *place* at which it shall be holden. If the Lords appoint an inconvenient time and place, the Commons may disagree to the holding of the conference under these circumstances, and may state to the Lords their reasons for not complying with their request; it then rests with the Lords, if they think proper, to alter the appointment: but in no case will the Lords permit the Commons (nor have the latter ever claimed the privilege) to name the place or time of meeting. But with respect to the *number* of managers, it is the form and was the ancient rule and usage, "that the number of the Commons named for the said conference are always double to those of the Lords" (*b*).

In what manner asked.

Another essential rule, which ought to be observed in demanding a conference, is, that the House asking the conference do, in the message, clearly express the subject upon which the conference is desired: and this, as well to enable the other House to estimate the importance of the question, as to see whether it be consistent with their privileges to meet and confer upon the matter submitted. However, this form of expressing pointedly, the subject-matter upon which a conference is desired, has not always

Subject expressed.

(*a*) 4 Hats. 49, 50.

(*b*) 4 Hats. 49.

been so strictly observed, particularly in later times, as not to admit of very general matters being alleged, as subjects for holding a conference. "A message to desire a conference upon a matter highly concerning the honour of his Majesty's government;" or, "upon a matter in which the honour and interest of the public are essentially concerned;" or, "upon a subject highly important to the privileges of both Houses of Parliament;" without specifically stating what interest of the public, or what privilege of Parliament, is to be the immediate topic of discussion, has, with several other subjects as general, been held to be sufficient to justify either House of Parliament in consenting to a conference so demanded. But of this, that House must be the judge to which the request is made; and if they are not satisfied, they will decline agreeing to the conference demanded, until they have further and more explicit information upon what subject their presence is required.

Managers
named.

The conference being agreed to, and appointed, **MANAGERS** are named for it. In general, these are named in the same way that committees were; by members calling the names of other members indiscriminately, which are taken down by the clerk, as he hears their names. But if insisted upon, the names of each member must be moved separately, and a question put,—upon his being manager of such conference.

Instructions to
managers.

Instructions are then to be given to the managers. If it be not a free conference, the course is, for the House desiring the conference to appoint a committee, to draw up reasons to be offered in support of the measure which the House has adopted. These are reported from the committee, and agreed to by the House, and are ordered to be communicated at the conference to the managers appointed by the other House. The managers, on neither part, have, at such a conference, any authority to go beyond the instructions they have received; those appointed by the House desiring the conference, are to read and deliver in the reasons adopted by the House; the others to have and receive those reasons, and afterwards to report them from

the conference, to the House of which they are members. It is irregular for any member to speak at such a conference, or to suggest anything, unless by way of introduction to the delivery of the reasons. If the reasons alleged on both sides, at a first and second conference, fail of inducing either House to give way, nothing remains but to hold a free conference.

A free conference is usually demanded after two conferences have been held without effect.

If the Lords, after a conference, do not insist on an amendment made by them to a bill, and are in possession of the bill, they make a communication to that effect by message, and not at a second conference. If the Lords (a) insist on their amendment, and the Commons do not insist on their disagreement, the regular course is to desire another conference to deliver their agreement and the bill; as the bill must remain ultimately with the Lords. If a third conference becomes necessary, it must be a free conference; which admits a more liberal discussion of the question under consideration, and gives an opportunity for the managers individually, and not restrained by any predetermined form of argument, to urge such reasons as appear to them to be of weight to support the cause in which they are engaged, and as may best tend to influence the House to which they are addressed. The House may distribute among the managers the several heads and topics upon which they are to insist; but the arguments in support of those topics must be suggested by themselves.

Arguments
at a free
conference.

After a free conference, no conference but a free conference can be held touching the same subjects; but should any new question of order or privilege arise, a conference may be had upon that particular matter. The form and manner of holding conferences, and the rules to be observed by the managers of both Houses in coming to, holding, and departing from, the place of conference, on the high authority of Mr. Speaker Onslow, appear to be as follows:

Form and
manner of
holding.

(a) 1 June, 1732.

The Commons are never covered, nor do they ever sit, at a conference with the Lords. The Lords who speak at a free conference, do it standing and uncovered. On entering the place of conference, (in the Painted Chamber), the Lords pull off their hats and walk uncovered to their seats, then put on their hats and sit down; then rising, and standing uncovered, deliver their reasons in paper to the managers of the Commons, who are to receive the same; and when the conference is over, walk uncovered from the place of conference. At joint committees of both Houses, as has been before seen, the case was different. Members of the House of Commons attending *them*, sat down together with the Lords, and put on their hats.

Place complained of by Commons.

The first complaint relating to a conference (*a*), recorded of the Commons, was of the *place* of meeting; that they found it "full of disease and inconvenience: and desired the place might be better fitted: not out of any humour to win any dignity to that House, but merely for conveniency." The Lords very unceremoniously replied, "that the inconvenience proceeded of themselves, because, in meeting, they exceeded the number of the committees, which the Lords did not; and if they would not exceed their number, the Lords hold the place convenient enough, and of ease, and therefore the former place to continue." But two (*b*) years afterwards, the House of Commons being moved, "That, seeing the ancient proceedings of Parliament had heretofore been by way of bill, and conferences not so usual; and that now the inconvenience and disease being found very great in the long and painful standing, and being bareheaded, of such as are appointed to attend," &c. a committee was appointed to consider of the subject.

On the 14th of March, Mr. Fuller reports the travail of the committee, touching "standing" and being "bare-headed" at conferences with the Lords. He said that it appeared, 1, *from precedent*, that in the 6 E. 3, the Lords and that House "sat" all together; that upon any occasion of con-

(*a*) 28 April, 1604. (*b*) 14 March, 1606.

ference, the Lords came down, and the conference was held with us, "in our place of sitting." It was urged, 2, *for reason*, that in all commissions, though the persons were unequal in degree, yet if they were equal in commission, they "sat" alike, and were all covered or bare-headed alike; 3, *for necessity*, that it was found a great hurt and danger to the health of their bodies, and almost impossible for the strongest to endure, considering the length of conferences, and the crowding and thronging there. Notwithstanding these arguments, drawn from 'precedent,' from 'reason,' and from 'necessity,' and reported above two hundred years since, from a committee expressly appointed to consider of the subject, no alteration has been made in the form of the Commons attending at conferences with the Lords. And Hatsell thinks, that though in some circumstances, relating to the time and place of meeting, and to the conveniency for the attendance of the managers, the Lords (a) appear to have some advantages above the members of the House of Commons, inconsistent with that equality which in other instances subsists between the two Houses; it is for the public advantage that the known and long established rules and forms should be adhered to. On the 19th December, 1667, it was ordered by the Lords, on the motion of the Great Chamberlain. "That a rail should be set, on that side of the table, in the Painted Chamber, on which the members of the House (of Commons) are to stand at conferences: to the end, that those members who are appointed managers or reporters of conferences, may not be disturbed by the press of other persons standing behind them."

On the 29th of July, 1689, the House of Lords were moved, that whereas Serjeant Maynard and Sir Thomas Lee (who were to be managers of a free conference) were aged and lame, they might be permitted, each of them, to have a stool to sit upon, which the House granted.

(a) 4 Hats. 49.

Not to deliver resolutions there.

The delivering at a conference the resolutions of either House, instead of reasons, is not agreeable to the ancient rules and methods of Parliament observed in conferences between the two Houses (a).

Rules of speaking at.

On the 7th February, 1580, the Commons order that their managers may use any reasons or persuasions they think good, in their discretions, so as it tend to the maintenance of any thing done or passed in the House before such conference had, and not otherwise: but that any such person shall not yield or assent, at any such conference, to any new thing there propounded, until this House be first made privy thereof, and give such order.

To support acts of their own House, not to make concessions, or enter into new terms.

On the 9th August, 1625, at a conference, which Sir E. Coke reports, he says, the Lords would have sent another message by him, but he refused, as having no authority; and desired them to send it by messengers of their own.

Not to argue against those who sent them.

On the 20th March, 1696, a complaint was made in the House, that a member of the House, at a free conference with the Lords, had argued *against* a bill sent up by them to the Lords. The House order the member to be named; an account is given of what he said; he is heard in his place; and being withdrawn, the House order that he be reprimanded by Mr. Speaker.

During the time of a conference, the House can do no business. As soon as the names of all the managers are called over, and they are gone to the conference, the Speaker leaves the chair without any question; and he resumes the chair again on the return of the managers from the conference.

Additions to amendments.

Though amendments of one House cannot be rejected by the other, yet one House may make additions to the amendments of the other. Not so, however, with bills of supply or charge upon the subject. Where the Lords have varied a bill that imposes a charge upon the people, either as to the time or manner of raising or collecting sums of money, or as to their amount or application, or in any con-

Amendments by the Lords in bills of supply, fatal to such bills.

(a) Com. J. 22nd February, 1702.

ceivable particular that relates to duties, the House of Commons, consistently with its forms, can no longer entertain the bill: but the House, in such cases, conceives itself at liberty to order a new bill to be brought in without a fresh petition.

It is impossible to quit this branch of the subject (of the amendment by the Lords of bills imposing burthens upon the people,) without observing that in the Commons also, there are sundry regulations peculiar to bills of supply: As, first, that they must originate in the Commons. Indeed the rights and privileges of the House of Commons in the passing of bills of aid and supply, are so essential to be accurately understood by all and vigilantly guarded by themselves, that it would be inexcusable, in a work at all treating of proceedings in Parliament, to omit a full, and even a minute and particular, account of the nature and extent of their admitted claims.

Regulations in Commons as to bills of supply.

Whenever any extraordinary aid was necessary, for the carrying on a war, or for any other object to which the established revenue of the Crown, (arising from its estates, and from the dues and services annexed to lands held immediately of the Crown) was inadequate, it was a principle of all the northern governments that the Crown should, in order to obtain their assistance, apply to the estates, in whatever form they existed: and should have no power itself, of levying this aid without the consent of the people; and subject to such rules and conditions as they should choose to impose. In England, this is first traced in the Saxon times (*a*): a people, says Hume, who seem to have admitted a considerable degree of democracy into their form of government (*b*). This privilege survived the Conquest; was recognised and confirmed by the Conqueror by his oath at his coronation; but was certainly often violated by his successors; till after many struggles, it was expressly acknowledged and declared by one of the articles of the

Origin of claims of Commons.

(*a*) See chap. 1 and 2 *passim*.

(*b*) History of England *temp.* Richard 3rd, and note that this is the concession of an adversary to liberal principles; of a writer, who though a careless and faithless historian, is an acute and subtle disputant, rarely to be detected in making a rash admission.

Great Charter obtained from King John. Further security upon this important point was, nearly a century after, afforded by the statute *de tallagio non concedendo*, which grants, "That no talliage or aid shall be taken or levied by us, " or our heirs, in our realm, without the goodwill and assent " of archbishops, bishops, earls, barons, knights, burgesses, " and other freemen of the land." And Sir Henry Spelman (*a*) says, *hoc quidem, antiquæ legis promulgatio est, et non novæ*. These laws or charters were often confirmed, and often broken; and gifts, loans, and benevolences, (by Morton's crutch and similar expedients,) were frequently extorted, when escuage failed and was evaded, and tenths and fifteenths,—subsidies,—tonnage,—poundage, and primage, were granted by the Commons with no cheerful or liberal hand; till the Bill of Rights finally declared that, "the levying " money for or to the use of the Crown, by pretence of " prerogative, without grant of Parliament, is illegal."

But jealousies also arose at different periods from the interference of the other branch of the Legislature, (the Lords); in matters of supply.

Interference of
Lords.

Supply:
claims of
Commons.

The House of Commons, indeed, from an early period of its history, had always claimed to itself, as its exclusive right, "The grant of aids and taxes to the Crown, for the " public service" (*b*). But the Commons did not always insist with the same earnestness and precision as they have of late years exhibited, upon their privileges, "that the " Lords should make no amendments to bills of supply." There are a variety of instances, particularly before the Revolution, where the Lords made amendments to bills of this nature, to which amendments the Commons *did* agree. At this period, they appear to have been satisfied with maintaining the principle, "that all bills of aid or supply, " or charge upon the people, should *begin* with them; and "that the Lords should not *commence* any proceeding that " might impose burthens upon the people." But they soon found that under pretence of making amendments in bills, originating in the Commons, the Lords inserted matter "which had the appearance of trenching upon the privi-

(*a*) Glossary, title Tallagium.

(*b*) 3 Hats. 136.

“leges of the Commons”(a); so that after several discussions and conferences, the Commons found themselves obliged to lay down the rule more largely, and to resolve (b) “that in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords.”

Supply:
claims of
Commons.

The first instance in which the Commons expressly took exception to the Lords inserting pecuniary penalties, was in the year 1690 (c). The ground and principle upon which this objection was made, and has since been maintained, is to prevent the Lords from evading, under a pretence of imposing a pecuniary fine or penalty, that rule so distinctly laid down by the Commons in several conferences which have been held upon the subject, “That all charges upon the people begin with the Commons, and cannot be altered by the Lords.” Upon the same principle the Commons have objected (d) to any alteration made by the Lords in the application or distribution of pecuniary penalties imposed by the Commons: but it does not appear that this objection (e) has been extended by the Commons to instances, in which the Lords, by disagreeing to clauses, or making other alterations in the bill as sent from the Commons (f), have entirely withdrawn from the penalty the object upon whom the Commons meant it should attach. The Lords have now for many years desisted either from beginning any bill, or from making amendments to bills passed by the Commons, which either in the form of positive taxes or pecuniary penalties, or in any other shape, might by construction be considered as imposing burthens upon the people, and the rules laid down by the Commons have been very generally acquiesced in.

The following propositions are supposed by Mr. Hatsell to contain nearly the whole of their undeniable pretensions:

First, That in bills of aid and supply, as the Lords cannot begin them, so they cannot make any alterations,

(a) 17 May, 1662.

(c) 5 January.

(b) 3 April, 1671. The Lords had reduced the duty on sugar from 1*d.* to $\frac{3}{4}$ *d.*

(d) 23 Feb. 1691.

(e) 9 Dec. 1702.

(f) 13 June, 1788.

Supply :
claims of
Commons.

either as to the *quantum* of the rate, or the disposition of it; or indeed any amendment whatsoever, except in correcting verbal or literal mistakes: and even *these* the House of Commons direct to be entered *specially* in their Journals, that the nature of the amendments may appear, and that no argument prejudicial to their privileges may be hereafter drawn from their having agreed to such amendments.

Secondly, That in bills which are not for the special grant of supply, but which however impose pecuniary burthens upon the people, such as bills for turnpike roads, for navigations, for paving, for managing the poor, &c. for which purposes tolls and rates must be collected: in these, though the Lords may make amendments, these amendments must not make any alteration in the *quantum* of the toll or rate, in the disposition or duration of it, or in the persons, commissioners or collectors, appointed to manage it. In all the other parts and clauses of these bills, not relative to any of these matters, the Commons have not objected to the Lords making alterations or amendments.

Thirdly, Where the bill or the amendments made by the Lords appear to be of a nature which, though not immediately, yet in their consequences, will bring a charge upon the people, the Commons have denied the right of the Lords to make such amendments, and the Lords have acquiesced.

And, lastly, The Commons assert that the Lords have no right to insert in a bill pecuniary penalties or forfeitures, or to alter the application or distribution of the pecuniary penalties or forfeitures which have been inserted by the Commons.

These rules are distinct, intelligible, and easy of application in all cases likely to occur. It has been sometimes attempted to extend this claim, on the part of the Commons, still further: or rather so to construe the claims, as to tend very much to embarrass the proceedings of the House of Lords upon bills sent from the Commons. This Hatsell does not consider a prudent measure: he thinks that the House of Commons may rest satisfied with the

observance of these rules, which they can maintain upon the ground of ancient practice and admitted precedents (*a*). Supply; claims of Commons.

Where the Lords have made amendments in money bills originating with the Commons, to which the Commons, consistently with their privileges, cannot agree, and yet it is not desired that the bill should be lost, the bill is altered in the Lords to the form which it is agreed that a new bill shall bear, a committee is appointed to inspect the Lords' Journals, and to report to the House. The report shows the nature of the amendments of the Lords; which being such as the Commons cannot agree to, are ordered to be taken into consideration that day six months, which of course disposes of the bill, and then a new one is brought in by motion, founded on the report of the committee on the original petition, and passes through the usual stages.

Hitherto it has been seen, that all bills for the granting of any aid and supply ought to begin with the Commons, whose undoubted and sole right (*b*) it is to direct, limit, and appoint the ends and purposes of such grants, which ought not to be altered or changed by the Lords.

It next occurs to notice, that any proposition for taxing the subject—whether the sole object of the bill or that of a particular clause only—must be first examined by a committee of the whole House; and that “the consideration and debate thereof (according to a resolution of the House made as long ago as 1667) (*c*) ought not presently to be entered upon, but adjourned to a day appointed, and then referred to a committee of the House, and their opinions reported thereupon, before any resolution or vote of the House do pass thereon.” By these means, in the first place, due and sufficient notice of a subject is given, and members are not surprised into a vote, but may come prepared to offer or weigh every argument which the importance of the subject demands. Secondly, it is no less wise and prudent, that such proposition should receive Supply; rules.

(*a*) 3 Hats. 140.

(*b*) 3 July, 1678.

(*c*) 18 Feb. 1667.

Supply ;
rules.

their full discussion in a committee of the whole House ; where a member is not confined in delivering his opinion, by the rules to be observed when speaking in the House ; which in matters of account and computation would be extremely inconvenient, and would necessarily deprive the House of much real and useful information. This mode of proceeding likewise gives an opportunity of a further and more mature deliberation when the resolutions of the committee are reported ; to which the House may not only agree or disagree, but if they are of opinion that the subject have not been sufficiently canvassed, they may recommit the whole or any part of the report.

Exception, of
voting money
by address ; not
to be en-
couraged.

For these reasons, the resolution of 1667 has been, particularly of later years, very strictly adhered to ; and it appears that it ought to be, in all cases, inviolably observed. Almost the sole exception to it, admitted by the practice of the House, is when they address the Crown to advance money for any particular purpose, and give assurances that the expenses so incurred, shall be repaid out of the grants of the next session. This practice has indeed generally been confined to small sums, and to services the amount of which cannot at the moment be exactly ascertained. It has also been used for the most part at the end of the session, when the committee of supply is closed, and when the sum required has not been thought of magnitude sufficient, to make it advisable to adopt the form of opening it again (*a*). However, as this practice of voting money by address, is contrary to the words and spirit of the standing order, it is a practice which the Speaker and those members who wish to preserve the credit and authority of the House of Commons, ought to discourage, and not permit it to be wantonly adopted, or without apparent necessity. General addresses of approbation and support of any measure recommended by the Crown do not come within this observation (*b*). The House may express their concurrence, and may promise their aid and assistance, without first considering the subject

(*a*) 8 April, 1741.

(*b*) 14 Jan. 1745.

in a committee of the whole House. But the specific sum to be voted, or tax to be imposed, must be resolved upon by a committee of the whole House (*a*).

It will be necessary to furnish a few instances, in order to illustrate the rules which have been laid down, and to assist their application to future cases. Supply;
precedents.

On the 1st of June, 1685:—On a report from the committee of supply, a resolution imposed one penny per pound weight upon all foreign sugar; the House added to this duty a farthing, and agreed to this resolution so amended. This proceeding was clearly disorderly and irregular (*b*). If, upon reconsideration on the report, it is thought expedient to increase either the sum granted in the committee of supply, or the tax imposed in the committee of ways and means, the uniform practice of the House has been to recommit the resolution for that purpose.

On the 26th April, 1689:—A clause was offered to be made part of a bill of supply, as a rider; the effect of which was, to lay a new tax. The same was refused to be admitted upon the third reading, and the House resolved to go into a committee of the whole House the next day, to consider of that proposition.

On the 24th February, 1780:—A motion being made, “That it be an instruction to gentlemen appointed to bring in a bill, that they do make provision for imposing an additional stamp duty on the admission of occasional freemen into corporations;” it was proposed to refer the consideration of this motion to the committee of ways and means.

On the 24th February, 1784:—“Upon report of a bill for explaining and amending a stamp act, a clause was offered for repealing an exemption * that had been allowed by the former act; but the clause after having been twice

(*a*) 3 Hats. 159.

(*b*) 3 Hats. 160.

* The exemption allowed was to bills drawn payable to order upon persons within ten miles.

Supply;
precedents.

“read, was withdrawn.” The reason for withdrawing this clause was the objection in point of form, that though the object of the clause was only to prevent frauds, the effect of it would be to tax persons, who, by the former act, were exempted from this duty. But on the 2nd of March, the House resolved itself into a committee of the whole House upon this subject; and having come to a resolution, “That this exemption should be taken away,” to which resolution the House agreed; leave was given to offer a clause pursuant to this resolution upon the third reading of the bill. The clause was received, and added by way of rider.

The House has always thought itself competent, without the intervention of committees, to lessen the sum proposed, and thereby to lighten the burthens of the people; but in no instance, unless through inadvertency, has it increased the sum, and thereby imposed a charge, not authorized by the previous deliberation and resolution of a committee.

So, the practice of inserting in a bill penalties or forfeitures, which impose a pecuniary tax upon the subject, should never be adopted, the Speaker in the chair. For though such a proceeding is contrary to no expressed or declared order of the House, yet, as it tends to increase the burthens of the people, it is contrary to the spirit and meaning of the rule of February, 1667.

On the 20th January, 1703. A clause to a bill was offered and brought up and read twice, with a blank for the penalty, which was filled up by the House with £100. On question that the bill be read the third time, it passed in the negative.

On the 7th March, 1744. A clause being offered upon the report of a bill, directing the payment of subsistence money to recruits, the clause is brought up and read, and then committed to a committee of the whole House, &c.

There are precedents to the contrary, but they are certainly irregular:—As, 24th April, 1759 (*a*), a clause is

(*a*) So, 10 May, 1714; 5 Feb. 1745; 18 May, 1772.

offered on the third reading of a bill, for inflicting penalties on persons offending against the act; the blanks are filled up in the chair, and the clause is added by way of rider. Supply; precedents.

The clause, in this case, ought to have been referred to a committee of the whole House, to report how the blanks should be filled up. Such is the course which would now be pursued, as in the instance of the 7th March, 1744; or if that were thought inconvenient, it would be considered proper to recommit the bill to the committee from whence it was reported.

The result is, that of late years, where, in any bill, it is necessary to inflict pecuniary penalties by a new clause, or by filling up blanks, the House has been particularly cautious not to do it upon the report, the Speaker in the chair; but will recommit it. The particular clause only in which the amendment occurs, need be recommitted. Proper course : Particular clause recommitted.

The clause for appropriating the monies granted in that session may, it appears (*a*), be added, on the report of the bill of supply. And a report of the committee of supply of a sum granted for making good the deficiencies of the supplies in the last session, has been amended by the House appropriating part of that sum to a particular service (*b*).

In the year 1675, it was declared to be an ancient order of the House, "That when there comes a question between "the greater or lesser sum, or the longer or shorter time, "the least sum and longest time ought first to be put to the "question." And the usage of the House, in compliance with this order, is, that if two sums be proposed to be granted to the Crown, or in consideration of any public service, as of the army or navy, if the number of men moved to be voted be different, or if in the committee of ways and means a larger and smaller tax be proposed together, the chairman of the committee, without considering the smaller sum in the form of an amendment, immediately states the question with that lesser sum, the fewer number of men, Lesser sum and longest time first put to question, in committee.

(*a*) 3 April, 1707.

(*b*) 16th May, 1717.

and the smaller tax ; and if that be carried in the negative, he then puts the question again, with the next smaller sum proposed. This was before such resolution, the form and usage of the House, delivered down by tradition, from old members ; and the reason for it was, “ That the burthens “ imposed upon the people might be as easy as possible.”

In the House,
put as an
amendment.

But if the proceeding be in the House, on a report there, though the alteration proposed be for the lesser sum, it must be proposed by way of amendment (*a*).

The other part of the rule which gives precedence to the “ longer time,” for the liquidation of a sum voted, relates to the mode in which subsidies were given. In that ancient manner of granting aids to the Crown, the custom was to give so many subsidies to be levied in such a time ; and the longer that time was in which the subsidy was to be collected, the easier for the subject. The spirit and meaning of the rule have been preserved in several instances which have occurred where a dispute arose touching the time of the commencement of a tax : then, the later time at which such tax should be proposed to have its beginning, has been put to the question before the earlier, though the earlier was first proposed.

Tacking other
bills to bills
of supply.

Before quitting the subject of supply, it may be usefully remarked, that the measure sometimes formerly resorted to, of tacking to a bill of supply, a clause or clauses containing unconnected matter, with an intention of thereby compelling the Crown, or the Lords, to give their assent to a bill which they would otherwise probably disapprove of and reject, is highly irregular, and a breach of the Parliamentary forms established by long and uniform practice between the two Houses, in the mode of passing bills. Where it is known that one of the component parts of the bill will be disagreeable to the Crown, or to the Lords, and that if it were sent up alone it would not be agreed to, in such case, and with a view to secure the royal assent, or the concurrence of the Lords, to tack to it a bill of supply which the

(*a*) 13th Dec. 1742 ; 12th March, 1749 ; 20th April, 1765.

exigences of the state make necessary, is a proceeding highly dangerous and unconstitutional. It takes away the negative voice of the King; debars the Lords of their privilege of freely debating and judging what is good for the kingdom; and tends to confound the separate rights that belong to each House of Parliament respectively. The King's answer to a money bill is in one form of words; to a public bill, the form is different; and to depart from those rules can have no other effect than to introduce disorder and confusion. In short, says Hatsell (*a*), however desirable the end may be, that is at any time aimed at by this measure, the means are always bad; it is much safer to trust to time, and to circumstances, which sooner or later dispose men's minds to accept of such propositions as are really for the public good, than to obtain even the best of laws by breaking down those bounds and fences which the wisdom of past ages has set up, on purpose to prevent and exclude greater inconveniences. Wiser and more constitutional was the ancient course of Parliament, to wait to receive acts of grace and such bills as concerned the redress of grievances and confirmation of the subject's liberties, before they presented bills of aid or supply.

And here it will not be irrelevant to observe, that very soon after the Revolution, the House found it necessary to establish a rule, "That they would not receive any petition
" against a bill then depending for imposing a tax or duty." The practice has been properly confined to the refusing to receive such petitions only, as object to a tax which the House of Commons is imposing for the current service of the year, and has never applied to petitions which have been offered in a subsequent session, desiring a repeal or reconsideration of the taxes imposed in a former. But this rule, of not receiving petitions against bills of supply, does not extend to petitions from the corporation of the City of London in common council assembled; as the forms used by the indulgence of the House, in the receiving their

Petitions
against bills of
supply.

(*a*) 3 Hats. 198.

petitions, preclude the House from knowing the substance or prayer of them, till they are received and read.

When passed,
bill is deposited
in the House
of Lords :
except bills of
supply.

Mode of re-
turning them

When a bill has received the sanction of both Houses, it is deposited in the House of Lords to wait the royal assent;* except in the case of a bill of supply, which after receiving the concurrence of the Lords, is returned to the Commons, in order that it may be presented by the Speaker to the throne. The practice has long been, not to send such bills by the Masters in Chancery, but for the clerk of the House of Lords to deliver them privately to one of the clerks of the House of Commons; and if there be any doubt which are, or are not, bills proper for the Speaker to present; the clerk of the House of Lords, in delivering a list of the bills ready for the royal assent, desires that the Speaker will mark in that list, which of them appear to him to be bills of supply, and those bills are immediately sent down to the House of Commons. This practice of the House of Commons of insisting that bills of aid to the Crown shall be presented by the Speaker, in the name of the Commons of Great Britain, naturally arises out of that principle of the constitution, "That all aids and supplies to his Majesty in Parliament, are the sole gift of the Commons;" and the same sense is expressed in the preamble to these bills, by the words with which they always begin: "Most gracious Sovereign; We, your Majesty's most faithful Commons, have given and granted to your Majesty," &c. Centuries ago, this manner of presenting the bill seems to have been regarded as no mean or trifling privilege. In the famous indemnity of the Lords and Commons, 9 Hen. 4,

* Hakewill has this conceit, p. 179. "For their last approbation, after passing both Houses, upon three several readings in either House, bills ought to have the royal assent; that so, like to silver, they may be *seven* times purified." An ingenious foreigner, before cited, has the following remark: "*Vous voyez combien cette marche est simple, autant que philosophique; c'est vraiment ainsi, que procède l'esprit humain. Se trace-t-on un plan, se propose-t-on un travail quelconque? on commence par considerer le principe; puis, on examine les details; puis, enfins, on revoit l'œuvre dans son ensemble. Tel est l'objet des trois débats.*"—Lettres sur l'Angleterre par M. de Staël Holstein.

now above 400 years ago, it is conceded, "That the grant
 " should be the grant of the Commons, assented to by the
 " Lords, and communicated in manner and form as hath
 " been hitherto accustomed, that is to say, by the mouth of
 " the Speaker of the House of Commons for the time
 " being." And the same right was loftily insisted on, in
 " 1580 * (a).

When the King is present on the throne, it has been
 customary, on the Speaker's presenting the bills of supply
 on the last day of the session ; or any bill for the particular
 service of the Crown in the course of the session (b) ; for
 the Speaker to make a speech at the bar of the House of
 Lords, either immediately arising out of the subject-matter
 of the bill itself, or recapitulating the principal objects
 which have employed the attention of the Commons during
 their sitting.

Speaker's
 speech on
 presenting.

Bills agreed to by both Houses, only want the royal
 assent to give them "the complement and perfection of a
 " law."

The royal assent to a bill may be given two ways: in
 person or by commission. 1. In person; when the King
 comes to the House of Peers in his crown and royal robes,
 (generally at the close of a session,) and sending for the
 Commons to the bar, the titles of all the bills that have
 passed both Houses are read: and the King's answer is
 declared by the clerk of the Parliament in Norman
 French ; a badge of conquest, which Blackstone (c) wishes
 to see fall into total oblivion, unless it be reserved as a
memento to show that our liberties are mortal. This form

Royal assent.

1st. in person.

(a) 18 March.

(c) 1 Bl. Comm.

(b) 3 Hats. 145.

* On the 12th of March, 1580, two messengers from the Lords
 bring down the bill for the subsidy, and withal, a report that their
 Lordships do say, "That the use is indifferent either to take it there,
 " or send it hither;" which being after their departure, reported to
 the House by Mr. Speaker, it is by the House resolved, "That the
 " use thereof is not indifferent, but always hath been and is, that it be
 " sent down into this House, and not left there."†

† 3 Hats. 141.

of giving the assent to bills was altered during the Protectorate of Cromwell, when the English language was used for such purpose. In 1706, the House of Lords passed a bill "for abolishing the use of the French tongue in all proceedings in Parliament, and courts of justice." Why this bill was rejected by the Commons; or why its provisions, with respect to proceedings in Parliament, were not adopted in an Act which was passed in the year 1731, "That all proceedings in courts of justice, should be in English," is not known.

As is still practised, if the King consents to a public bill, the clerk declares "*le roy le veult* ; the King wills it so to be;" if, to a private bill, "*soit fait comme il est désirée* be it as it is desired."^(a) If the King refuses his assent, it is in the mild and judicial language, "*le roy s'avisera*, the King will advise upon it;" the phrase corresponding with the *curia advisari vult* of the judges. The last recorded instance of the exercise of this prerogative appears to have been in the reign of Queen Anne, 11th of March, 1707.

The royal assent to a bill of supply is thus expressed—"*Le roy remercie ses loyaux sujets, accepte leur benevolence et aussi le veult* ; the King thanks his loyal subjects, accepts their benevolence, and wills it, so to be." In case of an act of grace, which originally proceeds from the Crown and has the royal assent in the first stage of it, the clerk of the Parliament thus pronounces the gratitude of the subject—"*Les Prélats, Seigneurs et Comunes en ce present Parliament assemblées, au nom de tous vos autres sujets, remercient très humblement votre majesté et prient à Dieu vous donner en santé, bonne vie et longue* ; the Prelates, Lords, and Commons in this present Parliament assembled, in the name of all your other subjects most humbly thank your Majesty, and pray to God to grant you in health and wealth long to live."

Not given to
1, Subsidy bills;
2, Bills of pardon.

To the subsidy bill, because it is the mere gift of the subject, the King's consent is not required for the passing it, but as it is implied in his thankful acceptance of it;

(a) D'Ew. 35. 116.

nor to the bill of pardon, because it is originally his free gift; no other circumstance is required, than that the thankful acceptance thereof by the Lords and Commons be likewise expressed.

2nd. By the statute 33 Hen. 8, c. 21, the King may give his assent by letters patent under his great seal, signed with his hand, and notified in his absence (a) to both Houses assembled together in the High House. Where the King (Henry 8) had not signed the letters patent for giving the royal assent to an act with his own hand, but his stamp had been set to them by another person authorised by warrant to sign his name, "*quia nos sine corporis nostri gravedine et periculo, manu nostrâ propriâ, prout mos est, signare nequimus;*" (b) the validity of the act was questioned, and the point argued before the judges at Serjeants' Inn; but it does not appear that the judges gave any opinion upon it in point of law.

By commis-
sion.

The words of the statute require that the commission shall be signed by the King himself with his own hand. The royal assent to the bill for attainder of the Duke of Norfolk in 1546, when Henry 8 was on his death bed, was questioned in Parliament on this ground, and the attainder was set aside, 1 Mary. George the Fourth was enabled by statute, "to appoint one or more persons, in his Majesty's presence, and by his Majesty's command, by word of mouth, to affix his royal signature by means of a stamp."

How signed.

When there have been irregularities or informalities in obtaining or recording the final concurrence of both Houses; as where the indorsement: "*A ces amendemens les communes ont assentues,*" was omitted upon the bill; or where, in fact, the bill has, by mistake, been inserted in a commission, and sent up to receive the royal assent among other bills, before amendments made by the other House and returned to the Commons, were agreed to; the prudent course has been to declare the act in question valid and effectual by a new enactment. Where "*soit baillie aux seigneurs*" had been omitted, and the Lords had

Must be duly
endorsed.

(a) D'Ew. 389. H. Parl. 40.

(b) Dyer, 93.

therefore, no warrant to proceed, the bill was returned to the House whence it had been received. When a bill or clause is sent to the other House by mistake, a message is sent to have the bill returned or the clause expunged.

Must be
agreed to by
both Houses
before date of
commission.

A commission cannot be legally granted to give the royal assent to any acts not consented to by both Houses, at the date of the commission. For the commission recites, that the King hath seen and perfectly understood, an act agreed upon by both Houses, and indorsed by them as accustomed.

Enrolment.

When a bill, whether deposited for that purpose in the House of Lords, or in matters of supply presented by the Speaker in the name of the Commons, has received the royal assent in either of these ways, it is then, and not before, a Statute, or Act of Parliament. A public statute, or act, is transcribed* into a roll by the clerk of the Parliament, with *le roy le veult* subscribed. But acts are not, enrolled without the suit of the party, and therefore the original bill filed among the bills of Parliament, and marked with the great seal, is the original record.

The original ingrossment rolls are preserved in the House of Lords, and all public, and local and personal acts, and nearly all private acts, are printed by the King's printer, and printed copies are made evidence in courts of law. The original rolls may also be seen, when necessary, and copies taken, on the payment of certain fees.

Promulgation.

The statute or act is placed among the records of the kingdom; there needing no formal promulgation to give it the force of a law. However, a copy thereof is usually printed at the King's press, for the information of the whole land. The usage of having them published by the sheriff, and kept for reference at his county court, which continued

* So the clerk transcribes every private act, and at the beginning says, "*in parlamento inchoat, et tent, etc., inter al. inactitat, ordinat et stabilit fuit, sequens hoc statutum ad verbum ut sequitur,*" viz. At the end he adds "*ego A. B. clericus parlamenti virtute brevis supradict dom. nos. reg. de certiorand, mihi direct. et huius annex certifico superius hoc scriptum verum esse tenor. act. parl. supradict, in eo brevi express. In cujus rei testimonium,*" etc.†

† D'Ewes 36.—Com. Dig. Parliament, G. 22.

till the reign of Henry the Seventh, hath been stated at large in the first chapter.

By *certiorari*, the tenor of the record of every act may be removed into Chancery, and delivered by the hand of the Chancellor into the Court of King's Bench. And by *mittimus* from the King's Bench, it may be afterwards sent into the Common Pleas or the Exchequer. And the King may command by writ, that each Court, cause the same to be inviolably observed.

Tenor of the record may be removed by *certiorari*.

It only remains to notice in the smallest possible compass, the peculiarity of procedure, and distinctive differences in the passing of Private Bills; the preliminary conditions required by both Houses; the petition of the parties concerned; the rules in which House a bill shall originate, according to its subject-matter; by what Parliamentary agency all private bills must be solicited; together with the fees and costs payable on private bills.

It has been seen in the first chapter of this treatise, that the right of petitioning Parliament for the redress of grievances, has been always acknowledged and constantly exercised, from the earliest period of our juridical history. While the judicial and legislative functions of Parliament were undefined and undistinguished, and the oppressions of the great and powerful, were the chief occasions of complaint, petitions were constantly presented to the great council of the realm, for the redress of those grievances, which were beyond the jurisdiction of the common law.

PRIVATE
BILLS, ORIGIN
OF.

The mode of disposing of these petitions by the appointment of receivers and tryers of petitions (discussed at length upon a former occasion (a)) was incontestably judicial, rather than legislative. And the customary reference of cases by the *consilium ordinarium*, to the Court of Chancery; and the growing practice of leaving parties to their remedy before the ordinary courts of common law, soon relieved Parliament from much of their remedial jurisdiction. The limits of judicature and of legislation came to be

(a) *Ante* chapter 1st, pp. 26, 27.—Chapter 2nd, p. 91.

gradually better understood. Petitions were more in the nature of petitions for private bills, than of applications for equitable remedies for private wrongs. Before long, petitioners applied expressly and distinctly for legislative remedies, with extended powers affecting the property of others, beyond the jurisdiction of the common law; and which only Parliament could give; and this may be considered as the origin of private bills.

Union of
judicial and
legislative
functions in
passing private
bills.

The functions of Parliament in passing private bills, have always retained the mixed judicial and legislative character of ancient times (*a*). The parties promoting a private bill, appear as suitors by petition for the bill; those who apprehend injury from the measure, are admitted to oppose it. The observance of prescribed forms and rules, must be as strictly pursued as in a Court of Justice; or the bill is lost, however valuable. Fees are paid by every party supporting or opposing a private bill, or any particular provision of it.

As a Court, Parliament tries and adjudicates upon the interests of private parties, for whose benefit a special law is required, or whose interests may be affected adversely by a proposed measure. As a Legislature, it simultaneously watches over and protects the public interests. The Chairman of the Lords' committees in the one House, and the Chairman of Ways and Means in the other, are entrusted with the peculiar care of unopposed private bills. While, out of the House itself, private bills are contested like private suits, and parties put to strict proof of notices, services, and forms; within the House, they are treated as if they were public bills: they pass through the same forms in every stage, as other bills; and are debated in precisely the same manner.

Definition of
Private Bills.

Every bill for the particular benefit of a person, a company, or a locality, in which the whole community is not interested, is, in a Parliamentary sense, a private bill, brought in on the solicitation of parties, and to which the payment of fees attaches.

(*a*) Palgrave, Parl. Rep. 1833.

Before private bills can be introduced into Parliament, certain preliminary conditions must be complied with, which must be separately proved in either House. Of these, Notice to the parties interested, of an intended application to Parliament, though not enjoined by any general regulation, is so often required by the Standing Orders of both Houses in particular cases, as to become a duty quite paramount and almost universal. By the Standing Orders of both Houses, (which are now greatly assimilated), Parliament has ordered certain public and personal notices to be given of intended applications for leave to introduce particular bills. In reference to these bills, concerning which notice is required, and which are classified* in the

* Comm. S. O. 18.—Lords' Further S. O. 16 Aug. 1838: *Emend. per Order* 11 Aug. 1842:—"That notices be given in all cases where application is intended to be made for leave to bring in a bill relating to the subjects included in any of the following classes:—

" 1st CLASS.—Burial ground, making, maintaining or altering.

" Church or chapel, building, enlarging, repairing, or maintaining.

" City or town, paving, lighting, watching, cleansing, or improving.

" Crown, church, or corporation property, or property held in trust for public or charitable purposes.

" Fishery, making, maintaining, or improving.

" Land, inclosing, draining, or improving.

" Market, or market-place.

" Local court, constituting.

" Market, or market-place, erecting, improving, repairing, maintaining, or regulating.

" Poor, maintaining, or employing.

" Poor rate.

" Stipendiary magistrate, or any public officer, payment of, if not out of county rate.

2nd CLASS.—" Making, maintaining, varying, extending, or enlarging, any aqueduct, archway, bridge, canal, cut, dock, ferry, harbour, navigation, pier, port, railway, reservoir, tunnel, turnpike road, waterwork.

3rd CLASS.—" Continuing or amending an act passed for any of the purposes included in this or the two preceding classes, where no further work than such as was authorised by a former act is proposed to be made.

" Charters and corporations, enlarging or altering powers of.

" Company, incorporating or giving powers to.

" County rate.

" County or shire hall, court house.

" Gaol or house of correction.

Standing Orders, it is a condition in all cases, and in both Houses, that the required notices:—

Notices how
and where
published.

“ Be published in three successive weeks in the months of October and November, or either of them, immediately preceding the session of Parliament in which application for the bill shall be made, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands to which such bills relate shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; or if such bill do not relate to any particular city, town, or lands, in the London, Edinburgh, or Dublin Gazette only, as the case may be; and that all notices required to be inserted in the London, Edinburgh, or Dublin Gazette, be delivered at the office of the gazette in which the insertion is required to be made, during the usual office hours, at least two clear days previous to the publication of the gazette, and that the receipt of the printer for such notice shall be proof of its due delivery” (a).

It is also ordered by both Houses:—

Intention to
take lands or
to amalgamate
with other
companies or
to sell or lease,
or to take or
alter tolls, &c.
to be stated
therein.

“ That if it be the intention of the parties applying for leave to bring in a bill, to obtain powers for the compulsory purchase of lands or houses, or for extending the time granted by any former act for that purpose, or to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company, or to levy any tolls, rates or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates or duties, or any other rights or privileges, the notices shall specify such intention; and that the whole of the notice relating to the same bill shall be included in the same advertisement, which shall be headed by a short title, descriptive of the undertaking” (b).

Applications
to owners or
occupiers,
where land to
be taken; and

“ That on or before the 15th day of December immediately preceding the application for a bill, by which any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought, application in writing, (and in

(a) Com. S. O. No. 19.

(b) Ib. No. 20.

“ Letters patent, confirming, prolonging, or transferring, the
“ term of.

“ Powers to sue and be sued, conferring.

“ Stipendiary magistrate, or any public officer, payment of, if
“ out of county rate.”

cases of bills included in the second class, in the form, as near as may be, set forth in the Appendix marked [A,]) be made to the owners or reputed owners, lessees or reputed lessees, and occupiers, either by delivering the same personally, or by leaving the same at their usual place of abode, or in their absence from the United Kingdom, with their agents respectively, of which application the production of a written acknowledgment by the party applied to, shall, in the absence of other proof, be sufficient evidence; and that separate lists be made of the names of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto" (a).

lists made of assents, dissents and neuters.

1. Among further orders, *relating specially to bills of the First Class*, it is required by the Commons:—

"That in cases of intended application to Parliament for bills relating to crown, church, or corporation property, or property held in trust for public or charitable purposes, notices in writing of such intention be given to the owners or reputed owners of such property, and to the lessees or reputed lessees of such property, holding leases granted for a life or lives, or for any term of twenty-one years or upwards; such notice to be given as aforesaid previous to the deposit of the petition for leave to bring in the bill, or, in the case of a bill brought from the House of Lords, previous to the first reading thereof" (b).

Notice to owners and lessees of crown, church or corporation property.

It is ordered by both Houses, as to bills of the 1st class:—

"That notices shall be affixed to the outer doors of the churches of every parish to which they specially relate, for three successive Sundays in the months of October and November, or either of them" (c).

To be affixed to church doors.

"That notices be affixed to the outer doors of the churches of every parish adjoining that in which a burial ground is proposed to be made, for three successive Sundays in the months of October and November, or either of them" (d).

On the church doors of adjoining parishes, when burial ground is to be made.

"That on or before the 15th day of December immediately preceding the application for any bill for making a burial ground, notice be given to the owner and occupier of every dwelling house, situated within three hundred yards of the boundary of the proposed burial ground" (e).

Notice to be given to owners and occupiers within 300 yards of boundary of burial ground.

The Lords further require, that "such notices respecting

To specify limits of burial grounds.

(a) Com. S. O. 21. Appendix to S. O.

(d) Lords S. O. 222; Com. S. O. No. 24.

(b) Ib. No. 23.

(e) Ib. No. 25.

(c) Ib. No. 22.

“ burial grounds, shall set forth and specify the limits
 “ within which every such cemetery or burial ground is
 “ intended to be erected or made (a).’ The Lords also
 include bills for burial grounds in their “ further Standing
 “ Orders, with regard to estimates and subscription con-
 “ tracts;” which it will be seen are applicable to bills of the
 second class, by the Standing Orders of both Houses.

2 *Of special orders relating to bills of the Second Class.*

Notice on
 door of
 sessions house.

Excepting
 Scotland; and
 there on doors
 of parish
 churches.

The Lords further order “ that all notices which regard
 “ the second class of bills, shall also be given at the General
 “ Quarter Sessions of the Peace for each county, riding, or
 “ division, in or through which the work shall be made, at
 “ Michaelmas or Epiphany preceding the session of Par-
 “ liament; by affixing such notice on the door of the
 “ sessions house.” But in the case of Scotland, instead of
 affixing such notices on the door of the sessions house;
 “ such notices, written or printed on paper, shall be
 “ affixed to the church door of the parish, in, or through,
 “ which the work is intended to be made, for three succes-
 “ sive Sundays, in the months of October and November,
 “ or either of them, preceding the introduction of the bill
 “ into Parliament” (b). It seems to be supposed that the
 churches in that country, are more frequented than the
 local Courts of Justice, otherwise it is difficult to conceive
 why their churches peculiarly, should be defiled and dese-
 crated with extraneous and contentious notices.

Both Houses require in bills of the second class:—

Notices to
 contain names
 of parishes.

“ That all notices shall contain the names of the parishes, town-
 ships, townlands, and extra-parochial places from, in, through, or into
 which the work is intended to be made, maintained, varied, extended,
 or enlarged, and shall state the time and place of deposit of the plans,
 sections, and books of reference respectively, with the clerks of the
 peace, parish clerks, schoolmasters, town clerks, and clerks of unions,
 as the case may be” (c).

Plans and
 duplicates
 deposited with

It will be observed that the time of deposit of the
 “ plans, sections and books of reference,” is included in these

(a) Lords S. O. No. 224.

(c) Com. S. O. No. 26.

(b) Lords S. O. No. 223.

Standing Orders, for “a plan and duplicate of the intended work, on a prescribed scale; a “book of reference containing “the names of owners and occupiers;” and in road, canal, and railway cases, &c., a “section and duplicate” are required to be deposited with the clerks of the peace (a). It is ordered,—

clerk of the peace, with book of reference.

“That in cases where the work shall be situated on tidal lands within the ordinary spring-tides, a copy of the plans and sections shall, on or before the 30th day of November, be deposited at the office of the Board of Admiralty” (b).

What on tidal lands.

Where powers are to be applied for to make any lateral deviation, the limits of such deviation shall be defined upon the plan. And an additional plan of any building shall be laid down on the plan on an enlarged scale (c). The section is to be drawn as prescribed, and the form, in which the plans and sections must be prepared, is illustrated by drawings in the Standing Orders.

Intended deviation to be shown on plan.

Section.

It is required by an Order—

“That the section be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and shall show the surface of the ground marked on the plan, and the intended level of the proposed work, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof respectively, and shall be referred to some fixed point stated in writing on the section, near either of the termini” (d).

Scale of section.

Clerks of the peace, sheriff clerks, &c., are enjoined—

“To make a memorial in writing upon the plans, sections, and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and that they do, at all seasonable times of the day, permit any person to view and examine one of the same, and to make copies or extracts therefrom; and that one of the two plans and sections so deposited, be sealed up and retained in the possession of the clerk of the peace or sheriff clerk, until called for by order of one of the two Houses of Parliament” (e).

Plans : Clerks of peace to make a memorial of the time of lodgment of plans.

It is further ordered—

“That on or before the 30th day of November, a copy of so much of the said plans and sections as relates to each parish in or through

Copy of so much as affects their parish,

(a) Com. S. O. No. 27.

(b) Ib. No. 28.

(c) Ib. No. 29, Fig. 3.

(d) Id. No. 30. See line DD Fig. 2.

(e) Id. No. 31, and see 1 Vict. c. 83.

to be left with parish clerk, schoolmaster, or clerk of the union.

which the work is intended to be made, maintained, varied, extended, or enlarged, together with a book of reference thereto, be deposited with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk), and the clerk of the union within which such parish is included in Ireland" (a).

And the Lords further require that copies of their Standing Orders shall be deposited with the clerks of the peace, &c., at the same time with the plan, &c. (b).

Time for deposit of plans in Houses of Parliament.

On or before the 30th day of November, a copy of the said plans, sections, and books of reference, must be deposited in the private bill office of the House of Commons (c). And on or before the 31st day of December, or in case such day shall happen on a Sunday, on or before the 30th day of December, a copy of the said plans, &c., shall be deposited in the office of the clerk of the Parliaments in the House of Lords (d).

It is required by both Houses:—

Estimate and subscription contract.

"That an estimate of the expenses of the undertaking under each bill, be made and signed by the person making the same, and that a subscription be entered into under a contract, made as hereinafter described, to three-fourths the amount of such estimate" (e).

When declaration may be substituted.

"That in cases where the work is to be made, wholly or in part, by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, such parties being the promoters of the bill, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and showing the actual surplus of such funds or revenue, after deducting the funds which may be required for any other work to be executed under any bill in the same session, and given under the common seal of the society or company, or under the hand of some authorized officer of such directors, trustees, or commissioners, may be substituted in lieu or in aid of the subscription contract, and in addition to the estimate of the expense, provided such funds shall be equal to the whole amount of the

(a) Com. S. O. No. 31, and see 1 Vict. c. 83.

(b) Lords S. O. No. 223, § 11.

(c) Com. S. O. No. 33.

(d) Lords S. O. No. 223, § 8.

(e) See as to depositing estimate and subscription contract in Private Bill Office, No. 139.

estimate, or the portion thereof not provided for by a subscription contract" (a).

"That in cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenues to be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a declaration stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense" (b).

With estimate of amount of rates.

"That every subscription contract contain the Christian and surnames, description and place of abode of every subscriber; his signature to the amount of his subscription, with the amount which he has paid up; and the name of the party witnessing such signature, and the date of the same respectively" (c).

Names and description of subscribers.

"That excepting in the case of a railway bill, (for which see Order, 46), a sum equal to one-twentieth part of the amount subscribed shall, previous to the 15th day of January, be deposited with the Court of Chancery, in England, if the work is intended to be done in England; or with the Court of Chancery, in England, or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland; and with the Court of Chancery in Ireland, if such work is intended to be done in Ireland" (d).

One-twentieth part to be deposited.

"That no subscription contract shall be valid, excepting in the case of railway bills, (for which see Order 47), unless it be entered into subsequent to the close of the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, and unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed, to be recoverable by action at law" (e).

Contract before close of previous session; to be recoverable by action at law, from heirs, executors and administrators.

"That previous to the deposit of a petition for a bill, copies of the subscription contract, with the names of the subscribers arranged in alphabetical order, and the amount of the deposit respectively paid up by each such subscriber, or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration, or of such declaration and estimate, be printed at the expense of the promoters of the bill, and be delivered at the Vote Office for the use of the Members of the House" (f).

Copies printed and delivered at Vote Office:

(a) Com. S. O. No. 35.

(b) Ib. No. 36.

(c) Ib. No. 37.

(d) Ib. No. 38.

(e) Ib. No. 39.

(f) Ib. No. 40.

Notice to owners when to abridge any public work.

"That previous to the deposit of a petition for a bill whereby any part of a work, authorized by any former act, is intended to be relinquished, notice in writing of such bill be given to the owners or reputed owners, and occupiers of the lands in which the part of the said work intended to be thereby relinquished is situate" (a).

Time for giving of notices.

"That (except in cases where notices are required to be affixed on church doors) no notice given, nor application, or deposit made, on a Sunday, or Christmas Day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day, shall be deemed valid" (b).

CUTS, CANALS, RESERVOIRS, AQUEDUCTS and NAVIGATIONS.

There are Standing Orders of both Houses regarding cases, where it is proposed to divert water from any existing cut, canal, &c., into an intended cut, requiring that the notices shall contain the name of the existing cut. And that the plan shall describe the brooks and streams to be diverted, with the specifications and sections required in given cases (c).

So, it is ordered:—

RAILWAYS.
Copy of bill to be deposited.

"That a copy of every railway bill, annexed to a petition, be deposited in the office of the railway department of the Board of Trade; (on or before the 31st of December" (d), in the Commons).

One-tenth of amount subscribed to be deposited.

"That a sum equal to one-tenth part of the amount subscribed, shall, previous to the 15th day of January, be deposited with the Court of Chancery in England, if the railway is intended to be made in England; or with the Court of Chancery in England, or the Court of Exchequer in Scotland, if such railway is intended to be made in Scotland; and with the Court of Chancery in Ireland, if such railway is intended to be made in Ireland" (e).

In the Commons it is ordered:—

Subscription contracts when entered into.

"That as regards railway bills, no subscription contract shall be valid, unless it be entered into subsequent to the day fixed in the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, as the last day on which petitions for private bills may be presented, and unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed, to be recoverable by action at law" (f).

(a) Com. S. O. No. 41.

(b) Ib. No. 42.

(c) Ib. Nos. 43 and 44.

(d) Ib. No. 45. Lords No. 227,

§ 2.

(e) Ib. No. 46. Lords No. 224,

§ 4.

(f) Ib. No. 47.

Both Houses order:—

“ That in all cases where it is proposed to make, vary, extend, or enlarge any railway, the plan shall exhibit thereon the distances in miles and furlongs, from one of the termini; and a memorandum of the radius of every curve not exceeding one mile in length, shall be noted on the plan in furlongs and chains” (a).

Distances marked on plan by miles and furlongs and memorandum of curves.

“ That in every section of a railway, the line marked thereon shall correspond with the upper surface of the rails” (b).

Line of railway on section to correspond with upper surface of rails.

“ That distances on the datum line shall be marked in miles and furlongs, to correspond with those on the plan; that a vertical measure from the datum line to the line of railway shall be marked in feet and inches at each change of the gradient or inclination; and that the proportion or rate of inclination between each such change shall also be marked” (c).

Vertical measures to be marked at change of gradients.

“ That the height of the railway over, or depth under, the surface of every turnpike-road, public carriage-road, navigable river, canal, or railway, or junction with a railway, and the height and span of every arch of all bridges and viaducts by which the railway shall be carried over the same, shall be marked in figures at every crossing thereof, and the extreme height over or depth under the surface of the ground shall be marked for every embankment and cutting exceeding five feet; and if any alteration in the present level or rate of inclination of any turnpike-road, carriage-road, or railway be intended, then the same shall be stated on the said section, and each numbered; also that cross sections, in reference to the said numbers, on a horizontal scale of one inch to every 330 feet, and on a vertical scale of one inch to every forty feet, shall be added, to explain the nature of such alterations more clearly” (d).

Height of railway over, or depth under, surface, to be marked at every crossing of a road.

“ That where tunnelling as a substitute for open cutting, or a viaduct as a substitute for solid embankment, be intended, the tunnelling shall be marked by a dotted line on the plan, and shall also be marked on the section, and the viaduct shall be marked on the section” (e).

Tunnelling and viaduct to be marked on plan.

“ That a copy of all plans, sections, and books of reference, required by the orders of the House to be deposited in the office of any clerk of the peace or sheriff clerk, on or before the 30th day of November immediately preceding the session of Parliament in which application for the bill shall be made, together with a published map to a scale of not less than half an inch to a mile, with the line of railway delineated

Plans and sections with books of reference and map to be deposited with Board of Trade.

- (a) Com. S. O. No. 48. Lords § 5, Fig. 4.
No. 227. (d) Ib. No. 51. Lords No. 227, § 5.
(b) Ib. No. 49. Lords No. 227, § 4. (e) Ib. No. 52. Lords No. 227, § 7.
(c) Ib. No. 50. Lords No. 227, § 7.

thereon, so as to show its general course and direction, shall on or before the same day be deposited in the office of the railway department of the Board of Trade" (a).

By a revised order of 1846, it is provided—

A published map to be deposited with the clerks of the peace.

"That a published map, to a scale of not less than half an inch to a mile, with the line of railway delineated thereon, so as to show its general course and direction, shall, on or before the 30th day of November, be deposited at the office of the clerk of the peace, or sheriff clerk, together with the plans, sections, and books of reference" (b).

3. *As to orders specially relating to Bills of the Third Class, the Commons require—*

In bills for Joint Stock Companies documents to be deposited in Private Bill Office.

"That as respects all bills for the incorporation of joint stock companies, or proposed companies for carrying on any trade or business, or for conferring upon such companies the power of suing and being sued, (such bills being bills of the third class, and not also of the first or second class), there be deposited in the Private Bill Office, together with the petition for the bill, a copy of the deed or agreement of partnership (if any) under which the company or proposed company is acting, or of the subscription contract (if any), and a declaration in writing stating the following matters:—

1st. The present and proposed amount of the capital of the company.

2nd. The number of shares, and the amount of each share.

3rd. The number of shares subscribed for.

4th. The amount of subscriptions paid up.

5th. The names, residences, and descriptions of the shareholders or subscribers, (so far as the same can be made out), and of the actual or provisional directors, treasurers, secretaries, or other officer, if any.

And such documents shall be verified by the signature of some authorized officer of the company or proposed company, (if any), and by some responsible party promoting the bill" (c).

LETTERS
PATENT:
Name of invention to be prefixed to notice in capital letters.

"That in cases of bills for confirming or prolonging the terms of letters patent, each notice shall have prefixed to it in capital letters the name by which the invention is usually distinguished, and shall contain a distinct description of the invention for which such letters patent have been obtained; and also an account of the term of their duration (d).

(a) Com. S. O. No. 53. Lords
No. 227.

(b) Ib. No. 54. Lords No. 227.

(c) Ib. No. 55.

(d) Ib. No. 56.

In framing notices, care must be taken by those to whom the soliciting of a bill is entrusted, that the Standing Orders of both Houses are, from the first, carefully complied with. The notices in the Gazettes and Provincial Papers, must be accurately drawn and examined with attention. It must be remembered that the future bill cannot embrace any object which is not mentioned in the notice, and the notice should, therefore be full, explanatory, and explicit. If various parties be interested, the notice must be joint. If the notices after being advertised or posted, are discovered to be incomplete or inaccurate, and the correction can be effected within the time prescribed by Parliament, the notices must be renewed. The persons employed to affix the notices, must be such as can prove the fact.

Drawing notices. Standing Orders to be conformed to.

A notice of an intended application to Parliament for *enlarging* the term of a particular act, has been held by a committee, to warrant an application for *repealing* that act and granting other powers. But the more precision, the greater safety.

In bills for the inclosing, improving, and draining of lands, &c., notice is expressly required by the Standing Orders of the House of Commons; and consequently must be published in the Gazette and County Papers in three successive weeks, in October or November, or either of them (*a*), but no form is given by the orders for these notices. They must of course be varied according to circumstances. The nature and extent of the lands intended to be inclosed or drained, must be accurately described, and the objects of the bill clearly specified. The person who affixes the notices should keep a copy of them, and should indorse thereon, minutes of the place, day and hour, when and where the notice was affixed.

Notices of inclosure and drainage bills.

Publication of.

In this, and all other cases of bills of the first class, where notice is required to be affixed to the church door of the parish "to which they specially relate" (*b*); it is obvious, that publicity being the object, the notice should be affixed

Affixed on church doors.

(*a*) Com. S. O. No. 18.

(*b*) Ib. No. 22.

Notices.	before the church is resorted to by the neighbourhood for the purpose of divine service. And the notices must be continued on the door in a legible state, and if torn or obliterated, a new notice should be affixed.
Bills for Paving and Lighting, &c.	Bills for paving or lighting towns, erecting a town-hall, market-place, &c., belong to the same class of bills, and require the same notices.
Of Road Bills.	When it is intended to apply for any bills for making turnpike roads, and levying tolls thereon, or for the increase or alteration of the existing tolls, rates, or duties upon any such roads, &c., a notice must be given, specifying such intention, and the whole of the notice relating to the same bill must be included in the same advertisement, and headed by a short title descriptive of the undertaking (<i>a</i>).
Heading of notice.	
Contents of notice.	For the form of these notices, it is required that they contain the names of the parishes, townships, &c., from, in, through, or into, which the line of road passes, or (if a new road is to be made or an old one diverted), is intended to pass. And they must also state the time and place of deposit of plans, and books of reference, with the clerk of the peace, &c. (<i>b</i>).
Time of giving.	No notice given—application or deposit made—on a Sunday, or Christmas Day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon, of any day will be deemed valid (<i>c</i>).
Publication of.	Besides the insertion of the notices in the Gazette and newspapers in the months of October and November, and notice at the General Quarter Sessions of the Peace, by affixing such notice on the door of the Sessions House; (required by the Standing Orders of the Lords with regard to bills of the second class); a previous application is required to be made to owners, lessees and occupiers, where lands or houses are intended to be taken, or an extension of any former act for that purpose is sought; and it is to be given upon or before the 15th day of December (<i>d</i>). And
Affixed on door of sessions house.	
Where lands are to be taken.	

(*a*) Com. S. O. No. 20.
 (*b*) Ib. No. 26.

(*c*) Ib. No. 42.
 (*d*) Ib. No. 21.

separate lists are required to be made, distinguishing the assents, dissents, and neuters (*a*). Application to owners.

It is incumbent on the clerks of the peace to make a memorial of the time when the plan and book of reference were lodged in their respective offices, and to permit such documents to be inspected and copied at all seasonable hours of the day. But it is the duty of the person soliciting the bill, to see that not only the required notices be given at the proper time, but that all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of subscription contracts and declarations, be deposited at the places and times and in the manner, prescribed by the Standing Orders. Notices, plans, &c., deposits of, to be attended to.

In bills for making or varying any canal, cut, dock, ferry, harbour, pier, port, &c., all of which are comprised in the second class of bills in the Parliamentary arrangement, the notices made necessary, are precisely the same as in the last mentioned case of turnpike road bills. The names of the parishes and townships, &c., from, in, through, or into which the work is intended to be made or varied, must be contained in the notice; and if the levy of any toll, or any increase or alteration in any existing toll, is intended to be proposed, the intention to levy any such toll, or to increase any existing toll must be specified in the notice (*b*). CANAL BILLS.

In cases of bills for confirming or prolonging the terms of letters patent, the Standing Order of the Commons has been already recited, which requires the name of the invention to be prefixed to each notice in capital letters, and also prescribes specifically what the notice shall contain, *viz.*, a description of the invention for which such letters patent have been obtained, and an account of their duration (*c*). LETTERS PATENT.

Estate bills usually, and indeed almost invariably, begin in the House of Lords; but, in some cases, the provisions ESTATE BILLS.

(*a*) Com. S. O. No. 21.
(*b*) Ib. No. 20.

(*c*) Ib. No. 56.

they contain, render it necessary for them to originate with the Commons.

The only notice required in estate bills, is in the case of the estate being mortgaged, when a Standing Order of the Lords requires that as soon as a petition is presented for a private bill, notice shall be given to every person being a mortgagee upon the estate (a) intended to be affected by such bill.

Applications
for consents :

To inclosure
bills.

The next point requiring attention, before certain classes of private bills are ripe for passing through their earlier stages, is an application to parties interested, for their consent to the measure, and an account duly kept and rendered, of their several answers to such application. In local bills, as inclosure and drainage, or turnpike road bills, every person whose rights and interests will be affected by the bill, should be applied to, and his answer taken down in writing, and separate lists should be made of those assenting, dissenting, neuter, and not to be found. On inclosure bills there are Standing Orders which require a printed copy of the bill to be signed by the Lord of the Manor and the owners of property assenting thereto, and a statement of property to be delivered in ; distinguishing which owners have assented, dissented, or are neuter thereto. And in practice, it is usual when a draft of the bill is prepared, to call a meeting of the proprietors and persons interested in the inclosure, and to submit the draft to the consideration of that meeting. At the meeting of proprietors, this draft of the bill should be produced, and read ; its objects explained ; conflicting interests and opinions reconciled ; the terms of all parties proposed and considered, and the provisions of the bill finally agreed upon. The draft is then transmitted to the Parliamentary agent to make the alterations necessary to carry the arrangements into effect, and afterwards, prepare the House copy ; and in due season to print and present the bill.

(a) Lords S. O. No. 150.

In framing the bill, (of which the title must be made conformable to the notices and statements in the petition), the preamble, which will have to be proved before the committee on the bill, must contain the names of the Lord of the Manor and of all persons interested; an accurate description of the quantity and nature of the lands to be inclosed, and the parishes in which they lie, with a statement of the objects and expected advantages of the measure. Attention is further particularly required, to see that there be inserted in the bill those provisions which are rendered necessary by Standing Orders of the House. Thus it is directed,—
“That in all bills for inclosing lands, the names of the
“commissioners proposed to be appointed, and the com-
“pensation intended for the Lord of the Manor and the
“owners of tithes, in lieu of their respective rights, &c., be
“inserted in the bill, &c. &c.” (a).

INCLOSURE
BILL.

To obtain the necessary information to satisfy the committee as to the applications to proprietors, the following is the course to be pursued:

A written or printed copy of the bill must be tendered to every proprietor who can be found, for his consent to it. The answers should be taken down in writing, and the fact proved by the person who made the application. The answers will sometimes be equivocal. The committee will put a construction upon the reply proved to have been given, and if the answers are evasive, will consider to what they substantially amount. If a person, whose rights are concerned, cannot be met with, this fact must be reported. The consents may be, and with a view to economy should be, all written at the end of one (the *same*) copy of the bill, or may be subscribed to words there entered, to this effect:—“I do consent to this bill passing
“into a law, subject to such alterations as Parliament may
“judge proper.”

Application to
proprietors
and answer;

how proved.

It is generally understood, though not absolutely required, that the consents of proprietors possessing to the extent of

(a) Commons S. O. No. 102.

four-fifths in value of the property to be inclosed or drained, ought to be obtained to warrant the application to Parliament.

In particular cases, where it has been difficult to make a personal application to a proprietor, his signature upon a printed copy of the bill, produced by a member or peer to whom it had been sent, and who attended to depose before the committee to the handwriting of it, has been considered sufficient evidence of consent. If in the kingdom, a proprietor must signify his consent himself. Where a person concerned in interest is abroad, a power of attorney must be made to some one to sign the consent bill for such absent proprietor, and the due execution of such instrument will have to be proved by one of the subscribing witnesses.

Survey.

To furnish the required statement of each person's property concerned in the inclosure or drainage, an accurate survey of the lands to be inclosed, &c. will be required. Such survey should be verified by affidavit under the General Inclosure Act. The state of property is commonly made out from the land-tax or poor's-rate assessment for the parish.

Map.

In the case of drainage, a map to show the relative situation of the lands should be provided, with an estimate of the expenses likely to be incurred in the undertaking.

ROAD BILLS.

On road bills, as the allegations of the preamble must be proved before the committees of both Houses, where the application is to make a new road, or a new branch, or to divert or widen a road, the estimate signed by the surveyor, the lists of subscribers, the map and plan, and account of the tolls expected to be collected, will have to be brought forward.

Where it is sought to amend or alter a former act, or where the application is for the extension of an existing term of years, the duration of the term in existence will necessarily appear; and it will accordingly be decided, whether the term in existence shall be determined, and a new term granted, (to commence from the passing of the

amended act), or whether a further term will be granted, to commence upon the expiration of the existing term. If the tolls are meant to be increased, it should be shown in what proportion such increase is to be made; and at all events, the state of the accounts, the receipts, and expenditures, and debts on the credit of the tolls, ought to be ready to be produced before the committee. In case of exchanges of land made by virtue of the bill, as before mentioned, Parliament requires the owners and occupiers of the lands to be given in exchange, to subscribe their signatures to the bill, and such signatures to be proved by a person who saw them subscribed.

With canal bills, in like manner, applications to owners and occupiers must be personal, and the answers taken down in writing. No persons concerned in interest should be left unapprized of the measures in contemplation. A witness should see the subscribers attach their names to the sums which they subscribe. The subscription need not equal the amount of the estimate; a part may remain to be paid out of the tolls, and with the money to be borrowed. The book of reference, and the list of owners and occupiers, should be carefully prepared by experienced and competent persons. CANALS.

The next step is to consider the provisions of the bill. Of these the first requisite, by a Standing Order of the House of Commons, is a clause for compelling the payment of subscriptions. The next is to oblige the company, commissioners, or trustees, to take security from their treasurer, receiver, or collector, for the faithful execution of his office.

After the first reading of the bill, it is usual and advisable for the solicitor, accompanied by the Parliamentary agent, to wait upon the perpetual chairman of committees in the House of Lords, and submit a printed copy of the bill to his inspection. By submitting a copy, with the blanks filled up, before the bill goes into committee, the solicitor learns what is considered objectionable, and the clauses can be arranged accordingly.

Dissents.

So, the owners or occupiers who dissent, are likewise required to give their certificate in writing, signifying that they have seen a printed copy of the bill, and do dissent therefrom; and the handwriting to such certificate must be proved by parol evidence before the committee. If the owners or occupiers so dissenting, do not give such certificate, they will have to attend personally before the committee. And the committee is instructed to report a list of such dissents.

The other evidence required before the committee is the usual proof of the allegations of the preamble, the consents of persons concerned in interest, &c. The consent of parties is always best evidenced by their signature to a printed copy of the bill; it is rendered still more clear and satisfactory, if accompanied with an explicit declaration, that "I, A. B.,
"or We, A. B., C. D., E. F., do consent to this bill passing
"into a law."

For renewing
LETTERS
PATENT.

In applications for renewing letters patent, a true copy of the letters patent must be annexed to the bill; but in proof, the original letters patent will have to be produced; and of course the Gazettes of London, Edinburgh and Dublin; where the name of the invention must appear in capital letters. So, witnesses must attend from the proper office, with the specification of the invention, as enrolled in the Court of Chancery; but copies of the specifications enrolled in the Court of Chancery in Scotland and Ireland, examined with the originals, and produced and proved by the witness who examined them, will be sufficient.

Evidence may be given of the expenses incurred by the patentee in the prosecution of his object, or in making experiments to perfect or improve the scheme; and the agent is at liberty to show the benefit to the public, and the loss to the inventor, unless the period of his patent be sufficiently extended to allow him to reimburse himself his unavoidable expenses, &c. &c.

PAVING, &c.

So, in paving, lighting, and improving bills, it may often be necessary, in committee on the bill, to show the consent of the inhabitants of towns to the provisions the bill

contains. Such parts of the proposed measure as specially require the consent of the inhabitants,—are “ clauses “ empowering to raise money ;” “ to purchase buildings ;” “ to make use of public ground for some of the purposes of “ the act ;” “ to widen streets ;” “ remove markets,” &c. The draft of the intended bill is in such cases submitted to the inhabitants, at a vestry or other public meeting.

On estate bills, all persons concerned are to sign the petition, and explicit directions are given in the Lords’ Orders, how the consents of parties interested, or concerned in the consequences, are to be given. ESTATE BILLS.

Lists of owners, lessees and occupiers, are required, under an Order before adverted to, to be lodged with other plans and documents in the Private Bill Office, and acknowledged upon the petition (*a*).

Such are some of the conditions to be fulfilled previous to the introduction of private bills; but there are also other matters requiring the suitor’s attention, at a still earlier stage of the proceedings. And first, so far as Parliament is concerned,—(that is, distinct from all essential extrinsic preliminaries, as notices, consents, &c.)—arises a question obviously very important to be early determined, viz., to which House application ought properly, (with reference to the subject-matter), and primarily, to be made?

This subject naturally, as well as for purposes of practical utility commodiously, divides itself into four heads:—

1. What statutes must begin with the Lords:
2. What statutes must begin with the Commons:
3. Which may commence in either House indifferently:
4. Which,—though not positively enjoined or particularly appropriated to have their beginning in either House, have yet, from courtesy and usage, acquired a preference in practice.

First, all bills that may in their consequences affect the peerage: bills for restoration in blood, or restitution of

In which House a private bill to originate.

(*a*) Com. S. O. No. 139.

Bills for removing disabilities and reversing judgments must be first signed by the King.

honours; bills for reversal of outlawries; bills of judicature, (that is, for giving judgment in a legislative way); all these must begin with the Lords.

With respect to bills for removing disabilities and incapacities arising from attainders, considerable doubt (*a*) appears to have been at one time entertained. In 1695 (*b*), a bill passed the House of Commons "for reversing the judgment given against Sir William Williams, for what he did as Speaker of the House of Commons, and for asserting the rights and freedom of Parliament." On its reaching the House of Lords (*c*), the Lords appointed a committee "to examine what had been done upon bills for reversing judgments which had begun in the House of Commons." The committee reported several instances, and the bill was immediately read a second time. In the Lords' Journal (*d*) of the 6th and 7th of May, 1702, appears a resolution of the Lords, "That this House will in no future time, ever receive any bill for reversing outlawries or restitution in blood, that shall not first be signed by her Majesty or her successors, Kings or Queens of the realm, and sent by her or them to this House first to be considered here." This arose from two bills of this nature, having had their commencement without, as is apprehended, any message from the Throne; and "contrary," as is said (*e*), in the Lords' Journal, "to the usage of Parliament, and her Majesty's prerogative."

The latter objection to the bill, that it infringed the prerogative, appears solid and well founded. The King, as the fountain of honour, is materially interested in all bills for reversing attainders, and for restitution of blood; and his consent ought to be signified before any proceeding is begun, and is properly expressed by his signature in the margin, to be affixed before the bill is brought in. But the other ground of Parliamentary usage does not seem

(*a*) 2 Hats. 337.

(*b*) Com. Jour. 1st Feb. 1695.

(*c*) Lords Jour. 14th Feb. 1695.

(*d*) Ib. 6th May, 1702.

(*e*) 3 Hats. 43. 63.

equally tenable; and if the claim of the Lords to an exclusive right that bills for restitution in blood should commence with that House, was ever intended to apply to all bills for removing the disabilities and incapacities resulting from attainders, such pretension seems now universally understood to have been tacitly abandoned. The cases of (a) Lord Bolingbroke (b), Earl Marischall, and several other instances in the Commons' Journal, (particularly in the years 1732 and 1733), decidedly establish, that bills for such purposes as not to be considered as comprehended within the resolution of the Lords of the 6th and 7th of May, 1702 (c).

2ndly. All bills directly or by construction imposing any burthen or charge upon the people, must begin with the House of Commons. That House has constantly asserted, and, it should seem, invariably preserved and exercised the exclusive right (d), "That bills of supply, imposing burthens
"upon the people, should be the grant of the Commons;
"and that the Lords should have no other voice than as
"one branch of the Legislature, by their assent, to give the
"authority of a law to the levying of those aids and taxes
"which the Commons shall think wise and fitting to
"impose." And herein are included, not only all bills of aid and supply for the exigencies of government, and collected from the kingdom in general, but all those by which money is authorised to be raised upon his Majesty's subjects, for any purpose or in any shape whatsoever; be it, by collecting tolls, rates, or duties, for private benefit, and collected in any particular district; or by imposing fines, or inflicting pecuniary penalties for offences; inclosure bills; bills for making roads, canals; paving and lighting acts; building bridges, &c. &c.

Bills imposing charges upon the people, must begin in the Commons.

3rdly. All other bills, of what kind soever, whether relating to the Parliament itself, or to either House sepa-

Other bills indifferently.

(a) 1725.

(b) 1760.

(c) And see Ogilvy's case, 4th

Feb. 1783.

(d) Resolution, 3rd July, 1678.

rately, or to individuals, as *e. g.* naturalization bills, name bills, &c. &c., may have their commencement, indifferently, in either House; but,

Bills relating
to peerage, in
Lords; to
elections, in
Commons.

4thly. It seems very reasonable, that bills which have for their object the regulation of such matters as fall more immediately under the cognizance of either House of Parliament, should begin in that House which must, from its more extensive experience, be most competent to frame the provisions of the bill, so as best to answer the intended purpose (*a*). The bill for settling the peerage of Great Britain, in 1719, began in the House of Lords. The several laws which have passed for regulating elections, and for the exclusion of certain persons from being eligible to be members, have had their commencement in the House of Commons. Divorce bills, bills for dissolving marriages and allowing separate maintenance, usually begin in the Lords. So, estate bills, bills for enlarging the powers of tenant for life or tenant in tail; for enabling bodies corporate or ecclesiastical persons to alienate or exchange; for selling settled estates and purchasing others to be settled in lieu thereof, &c. &c. should commence in the Upper House, unless it be necessary to make provisions in them that require them to be begun in the Commons. On the other hand, bills for confirming or prolonging the term of letters patent,—probably because the public may be affected beneficially or otherwise by the result,—usually begin in the House of Commons.

Divorce and
estate bills in
Lords.

Letters patent
in Commons.

But it will of course sometimes happen, that the time limited for receiving private petitions in the House of Commons is elapsed, and in some instances before the necessity of applying to Parliament, is discovered: in such cases, bills falling within the two last-mentioned classes,—that is, such as may have their beginning as well in one House as the other,—are of course begun in the Lords.

With the
Crown,

One bill there is, which begins neither with the Lords nor Commons, but with the Crown; and that is, “A bill

(*a*) 3 Hatsell 63.

“for a general pardon.” This is first signed by the Crown, and transmitted to both Houses of Parliament. It afterwards, however (a), again receives his Majesty’s royal assent, in the same form with every other public bill; and the answer is, “*Le Roi le veult.*” general
pardon.

And so much for the inquiry in which House it may be necessary or proper to begin a bill.

When all the preliminary conditions have been complied with, application for leave to bring in a bill is made by petition to either House. It is ordered by the Lords— Petition
essential.

In Lords.

“That for the future no private bill shall be brought into this House until the House be informed of the matters therein contained, by petition to this House for leave to bring in such bill: and that this order be added to the roll of Standing Orders” (b).

And by the Commons—

In Commons.

“That no private bill be brought into this House, but upon a petition first presented, with a printed copy of the proposed bill annexed: and that such petition be signed by the parties, or some of them, who are suitors for the bill, and be duly endorsed by the examiner of petitions for private bills” (c).

Bills which have proceeded through certain stages as public bills, have sometimes been withdrawn, upon notice being taken that they were private bills, and ought to have been brought in on petition. An excepted case is, a bill for reversing an attainder or outlawry; where the King’s allowance written in the margin, is sufficient without a petition. And there have been some cases of bills for carrying on public works, (as the Knightsbridge and Kensington openings, in 1842); which are either to be cited as favourable exceptions to the rule, or regarded as anomalies (d). Such bills have been brought in without the form of a petition, but have been subjected to all the regulations prescribed for the conduct of private bills; to the proof of notices and all the other precedent conditions; and to the payment of fees. Exception.

(a) 3 Hatsell, 63.

(b) Lords S. O. No. 95.

(c) Com. S. O. No. 112.

(d) May, 402.

How to be
signed.

The petition, so rendered necessary to be preferred by the Orders of both Houses, must be signed by the parties who are suitors for the bill, or some of them. The next subject of inquiry will be the mode of deposit of the petition for a bill. It is a recent order of the House of Commons, (of 1846).

Deposit of
petition and
time.

"That every petition for a private bill, headed by a short title descriptive of the undertaking, corresponding with that at the head of the advertisement, with a declaration signed by the agent, and copy of the bill annexed, be deposited in the Private Bill Office, on or before the thirty-first day of December; and that such petition, bill, and declaration, be open to the inspection of all parties" (a).

Copy of bill
annexed.

The Standing Order requires that a printed copy of the proposed bill shall be annexed to the petition, and in the case of railway bills, an addition to another Standing Order of the same date (1846), requires that a copy of the bill annexed to the petition, be deposited in the office of the railway department of the Board of Trade, on or before the 31st day of December (b). That the declaration of the agent shall state to which of the three classes of the bills such bill belongs, and the objects which the proposed bill will give power to effect, and a copy of such declaration shall be deposited at the Board of Trade (c).

It was ordered in the same year,—

List of peti-
tions to be
kept in order
of their
deposit.

"That a list of all petitions for private bills be kept in the Private Bill Office in the order of their deposit, according to regulations to be made by Mr. Speaker" (d).

It has been before shown, (Commons' Standing Order, No. 40), that previous to the deposit of a petition for a bill, copies of the subscription contract or declaration and estimate, must be delivered at the Vote Office. Formerly the receipt of all documents required by the Standing Orders, to be deposited in the Private Bill Office, ought to have been acknowledged by one of the clerks in that office upon the petition, *before it was presented*; now it is ordered,

(a) Com. S. O. No. 140.
(b) Ib. No. 45.

(c) Ib. No. 141.
(d) Ib. No. 142.

"That all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of the subscription contracts, and declarations required by the Standing Orders of the House, be lodged in the Private Bill Office; and that the receipt thereof be acknowledged accordingly, by one of the clerks of the said office, upon the said documents, and upon the petition, when deposited" (a).

The same in the Lords, by their Standing Order, No. 223, § 8.

If, after a petition has been presented, additional provisions should be required to be made in the bill, a petition for that purpose, should be presented with the proposed clauses annexed, in the same manner as the bill was attached to the original petition.

Additional provisions.

Petition for.

The next thing to be attended to, is the time within which the petition shall be presented. In the House of Commons formerly, petitions for private bills, must be presented within twenty-one days after the first Friday in every Session of Parliament, and no petition could be received after that time, except by special leave of the House. Now it is ordered: That all the petitions for private bills be presented on or before a day, to be appointed at the commencement of every session (b). The earliest time at which private petitions are allowed to be presented in the case of a new Parliament, has always been considered to be the fourth day; the three first days being occupied with public business.

Time limited for presenting petitions.

In the Upper House also, at the opening of every session, a time is fixed within which petitions for private bills are required to be presented. But in both Houses, if from any unavoidable accident, or owing to sickness, or from any special circumstance, the time limited for receiving petitions for private bills, have elapsed, without the petition being presented, a petition must be preferred, stating the fact, and assigning the reason, and setting out the substance of the petition intended to be offered, and requesting leave still to present it, though beyond the time limited. This petition used to be referred by the House, to the Standing Orders' Committee. That Committee received evidence of

If petition not presented in time, what course to be taken:

Petition for leave to petition.

(a) Com. S. O. No. 139.

(b) Com. S. O. No. 115.

the truth of the allegations in the petition, and reported upon those facts only. If the report were favourable, leave was given to present the petition. Now examiners of petitions are appointed, to institute all preliminary inquiries; but whether the petition above mentioned would be referred to them in the first instance, is not clear.

Place where
such business
transacted.

Having considered the *time* within which the petition must be presented, it is fit to advert to the *place*, where the business relating to such matters is principally transacted. This, in relation to the House of Lords, is the Parliament Office, or the office of the clerk of the Parliament at Westminster. But the House of Commons in 1810, established a PRIVATE BILL OFFICE for this purpose, and a book to be kept therein, to be called,

“ ‘ THE PRIVATE BILL REGISTER,’ in which book shall be entered by the clerks appointed for the business of that office, the name, description, and place of residence of the Parliamentary agent in town, and of the agent in the country (if any) soliciting the bill; and all the proceedings, from the petition to the passing of the bill:—such entry to specify briefly each day’s proceeding before the examiners of petitions respectively; or in the House, or in any committee to which the bill may be referred; the day and hour on which the examiners or committee is appointed to sit; the day and hour to which the proceedings before such examiners or committee may be adjourned, and the name of the clerk attending the same. Such book to be open to public inspection daily, in the said office, between the hours of ten and six” (a).

Form of
petition.

Heading

Of the form of the petition, depending as that necessarily must, on the subject-matter, and the specific objects of the prayer, little useful or instructive can be said. It must be headed by a short title, descriptive of the undertaking (b). There ought not, of course, to be any *departure* from the notice, and there should be a correspondence in the statement of the reasons for the measure in the petition, with the preamble of the intended bill. It may be sufficient generally to remark, that no provisions can be made in the bill which are not warranted by the allegations in that

(a) Com. S. O. No. 138.

(b) Ib. No. 140.

petition; that the allegations of the petition should be correct, and therefore capable of being proved; and should be such as to warrant the intended provisions in the bill; otherwise it will be necessary to present a second petition. It must be addressed: "TO THE RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL IN PARLIAMENT ASSEMBLED;" or, "TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND IN PARLIAMENT ASSEMBLED;" and must conclude with, "YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT," &c.; and it must be drawn on parchment, or it will not be received by either House. If presented to the Lords, the petition must be signed by all who are concerned (*a*) in the consequence of the bill: if preferred to the Commons, by the parties who are suitors for the bill (*b*). By this latter expression is not meant that all suitors must sign the petition, but that no party may sign for another. For the House of Commons has more than (*c*) once (*d*) resolved that all petitions ought to be signed by the petitioners with their own hands, by their names or marks; and that it is highly unwarrantable, and a breach of privilege, for any person to set the name of any other person to a petition. Yet the signatures to the petition are not usually required to be proved before the committee to which the petition is referred. Persons intended to be called as witnesses to support the allegations, ought not to sign the petition; as it will be an objection to their giving evidence in favour of the bill. In certain cases, some accompanying documents must be annexed to the petition, and every petition should conclude with a prayer.

Signature of
petition.

A brief mention follows of the essential requisites to petitions in particular cases. And first, when it concerns the Crown or the Revenue. FISCAL.

1. In applications for public money, a petition which states any distress, and prays to be relieved from the charity

Applications
for public
money.

(*a*) S. O. Lords, No. 98.

(*b*) S. O. Com. No. 2.

(*c*) C. J. 14th Nov. 1689.

(*d*) C. J. 2nd June, 1774.

Fiscal.

or munificence of the public (*a*), ought not, in point of form, either to prescribe the *quantum*, or to mention the fund out of which that relief is to be granted. The prayer should be general; and it should be left open to the consideration of the House, what the nature of the relief should be, and to what extent. The great number of petitions that were presented to the House of Commons at the commencement of the session which began in October, 1705, from persons either claiming an arrear of pay as officers, or making some other demand upon the public purse, made it necessary for the House to put some restriction upon these applications: for being sometimes promoted by members who were friends to the parties; in other instances carrying with them an appearance of justice; many members again being actuated by charitable motives; such petitions came in the House to be regarded with something of favour, or at least not to encounter any very strenuous or successful opposition. By these means, and owing to such causes, large sums of public money were in a short space of time granted to private persons, and too often improvidently, and without sufficient grounds of active and meritorious public service.

Very early, therefore, in the next session, on the 11th of December, 1706, before any petitions of this sort could be again offered, the House came to a resolution, "That they "would receive no petition for any sum of money relating "to public service, but what came recommended from the "Crown." This resolution not being at that time made a Standing Order, had no effect beyond the session in which it was passed, so that soon after the same practice returned again; and the same mischief resulting from it, the House, upon the 11th of June, 1713, ordered the resolution of the 11th of December to be read, and declared it to be a Standing Order of the House. From this time, whenever any petition which desires relief by public money is offered, or any motion is made to this end, before the Speaker puts

(*a*) 3 Hats. 213.

the question for bringing up the petition, it has been the practice, in conformity to this order, that the recommendation of the Crown should be signified by some member authorized to deliver it. Fiscal.

2ndly. Bills for compounding debts due to the Crown.

To a petition for leave to bring in a bill for compounding debts due to the Crown, a certificate from the proper officer presiding over that department of the revenue must be annexed, "stating the debt; what prosecutions have been made for the recovery of the debt; and setting forth how much the petitioner and his security are able to satisfy thereof" (a). The petition is referred, in the first instance, to a committee above stairs, to take the proofs thereon, and the next day a report is made to the House. The petition will then be referred to a committee of the whole House, where alone a petition, motion, or bill for this purpose, can be proceeded in, it being an order of the House, "that this House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole House" (b). The next day after the report, is the customary time for the House to resolve itself into a committee on the petition, and leave is then given to bring in the bill. The bill, having been previously printed, is then presented and read. After *three* clear days have elapsed, the bill, having been examined, as is required, by the proper clerks, and certified to be duly prepared, may be read a second time, when it will be committed for the next day se'ennight to a committee of the whole House. The bill having passed the committee, on the following day the report must be prepared, with all amendments made in the committee. The chairman of the ways and means (c) will then make the report to the House, and the bill, from that time, passes through both Houses with the public bills; and will be

Petition for leave to bring in bill for compounding debts of Crown.

(a) O. H. C. 25th March, 1715.

(b) O. H. C. 29th March, 1707.

(c) It being a committee of the whole House.

Local.

printed with the public acts, by the King's printer. The Lords receiving it as a public bill, do not require any evidence to support it; but it will *there* also, be committed to a committee of the whole House. Before the bill goes into a committee in the House of Commons, it is the duty of the solicitor, or his agent, to provide printed copies of the bill for the chairman and clerks at the table, filled up to complete the bill as it is proposed to pass the committee. The agent too must take care to supply printed copies of it for the use of the Lords.

Analogous to these subjects of applications for public money, and bills for compounding debts due to the Crown, is the case of,

Petitions
relating to
Crown lands.

3rdly. Petitions relating to Crown lands, which, when they are offered to the House, must come recommended by his Majesty, before they can be received; and the Chancellor of the Exchequer, or some other member appointed by his Majesty, will signify, "that his Majesty, having been informed of the contents of the petition, gives his consent thereto, and recommends it to the consideration of the House." And petitions of this sort are, in like manner, referred to a committee of the whole House.

Application
where the
King is in-
terested as a
party.

In like manner it has been before (a) seen, that when,

4thly. The King is interested as a party in any bill depending in either House of Parliament, a printed copy of such bill, with a memorial from the agent to the Lords of the Treasury, should be left at the Treasury, requesting that inquiry may be directed to be made respecting his Majesty's rights and interests, and that the consent of the Crown may be signified to the bill.

LOCAL BILLS.
In inclosure
and drainage
bills.

A petition for leave to bring in an inclosure or drainage bill, should have the signature of such of the principal proprietors, as are disposed to support the measure. And the county member is usually requested to present the petition and to take charge of the bill.

For a canal

So, a petition for a canal bill or railway bill, must be

(a) *Ante*, chapter 4.

signed by some of the chief supporters of the undertaking. The intended provisions of the bill must be correctly detailed, since no deviations will be allowed, unless upon special petition.

bill or railway
bill, &c.

The signatures to a petition for a bill for making a turnpike road, will differ, as its prayer and object varies. If the application to Parliament be, to make a new turnpike road, it must be signed by some of the principal owners and occupiers of estates through, or near, which, the road is intended to be carried. If it be to vary or alter the line of any turnpike road already made, or to continue or extend a former act or acts, then the petition must be signed by some of the commissioners appointed under or by virtue of such act or acts.

For road bills.

So, in bills for paving, lighting, or improving towns, &c., the draft of the bill should be submitted to the inhabitants, as has been shown, for their consideration. And if an act is to be amended, it should be signed by the commissioners under the existing act. These are the only preliminary requisites in improvement bills, in ordinary cases. But if the bill be for lighting with gas, the estimate of expense and list of subscriptions, will have to be produced and proved, and must therefore, be previously prepared by the solicitor.

For paving and
lighting towns.

By gas.

In divorce bills, which must have their commencement in the House of Lords, a petition is presented to the House signed by the party applying for the divorce. With the petition, is delivered upon oath, at the bar of the House, an official copy of the proceedings, and of a definitive sentence of divorce (*a*) *a mensa et thoro*, in the Ecclesiastical Court, at the suit of the party now desirous to present such petition to the House.

PERSONAL
BILLS.
For Divorce
bills.

The allegations of the petition will of course depend upon the circumstances of the case.

The marriage,—with its date; the settlement on the occa-

(a) O. L. 141, Die, Mercurii, 28 Martii, 1798.

Personal bills.

sion of the marriage, the cohabitation of the petitioner and his wife, and the issue of the marriage (if any); the detection of the criminal intercourse, action brought, and judgment recovered; the proceedings in the Consistory Court, and definitive sentence of divorce from bed and board there obtained, together with the loss of the petitioner's comforts of matrimony, and liability to have a spurious issue imposed upon him; these form the usual allegations of the petition.

When signed
by power of
attorney.

The petition must be signed by the party suing for the divorce, unless the petitioner should be abroad at the institution of the proceedings, when he may by power of attorney authorize a person to sign the petition for him.

For an Estate
bill.

Supposing estate bills to begin, as they most commonly do, in the House of Lords, a petition for an estate bill is referred to two of the judges, before whom all parties concerned in the proposed bill, are to appear. The contents of the petition will necessarily depend upon the objects of the measure. The ground of the application,—the interests of the parties,—their relative situation, and the state of their claims, must be clearly set out in the petition: and the necessity for the interposition of Parliament, to effectuate their common purpose, should be made manifestly to appear.

Compensations
shown.

The next thing to be shown is, that the alteration intended, is visibly for the benefit of all parties concerned; or, that they are willing and desirous that it should be effected, receiving a compensation or equivalent. And besides the considerations, in respect of which certain parties are bound, it should appear that there are no others in anywise entitled, or who can at all prefer a claim for compensation. There are certain rights, of which, as being remote and precarious, or rather, as defeasible, the House will not take notice.

But although such expectant rights as are easily defeated are not regarded by Parliament, the most solicitous attention is always paid to existing claims and beneficial interests.

In this spirit is required the notice before-mentioned, which must be given to any person being a mortgagee upon the estate intended to be affected by such bill. Personal.

But, in general, it may be remarked, the object of an estate bill is to leave the title exactly as it stood under the ownership of the testator or settler; liberating (*a*) it from certain uses which he has declared; and paving the way for a new or more convenient settlement, by selling parts of the lands with a view to the purchase of others more convenient, or to authorise partitions, exchanges, and the like.

All persons concerned in the consequences must sign the petition, that desires leave to bring in the bill (*b*).

The petition for a Naturalization Bill is signed by the party making the application, and the bill may be presented the same day with the petition, and read a first time. For Naturalization bill.

For a Name Bill, a petition must be presented in the ordinary mode, and its allegations must be such as will warrant the intended provisions of the bill. If it be proposed "to enable A. B. to take and use the surname of "C. D., and to bear the coat of arms of the name and family "of C. D., pursuant to the will of the said C. D." the will must be produced and proved. For Name bill.

No application for a bill for confirming or prolonging the term of Letters Patent can be successful, unless it appear that the letters patent will expire within two years from the commencement of the Session of Parliament, in which the application for the bill is made. This provision marks the *time* limited; and another Standing Order of the Lords, with equal distinctness ascertains the *person*, alone intended to be privileged. For application can only be made by the person, or by the representative of the person, who himself, originally discovered the invention. And it must appear that the knowledge of such invention was not acquired by For prolonging the term of letters patent.

(*a*) Preston on Abstracts, vol. 1, p. 164.

(*b*) Lords S. O. No. 98.

such person as aforesaid, by purchase or otherwise, from the inventor or owner of the same ; or by information that such invention was known and pursued in any other country (a).

Mode of proceeding on the petition.

Let it be supposed that a petition for leave to introduce a private bill into the House of Commons, has been prepared. The next step is to examine, in a general way, the manner of proceeding on the petition.

New course recommended by report of committee.

The Select Committee on Private Bills in the House of Commons in their Report, (1846), recommended :—“ that all “ applications for such bills shall, previously to the Session of “ Parliament, be referred to a selected board or department ; “ to whom a memorial for authority to put in force the powers “ of the act must be presented, and that each department “ shall appoint inspectors to proceed to the spot, &c.

“ That, with the view of an immediate saving of time and “ expense in the proof of the Standing Orders, the proofs “ now taken before the sub-committee, shall be taken before “ officers to be appointed by the Speaker, who shall com- “ mence their sittings for the purpose, in January, 1847. “ That a petition with the bill annexed, shall be lodged in “ the Private Bill Office before an appointed day, and that “ no bill be read a first time, until the report of such officer “ shall have been presented to the House.

“ That a proper taxing officer, such as is attached to “ Courts of Justice, should be appointed under the authority “ of the Speaker, and a scale of taxation be authorised and “ published by him, for the guidance of all parties pro- “ moting or opposing local or private bills.”

The reader will naturally be desirous of knowing to what extent these recommendations of the committee have been acted upon. He will find, that important changes have commenced to take effect in the disposal of the private business of Parliament: As regards the first branch of these suggestions, the report has been partially carried out by the Act 9 & 10 Vict. c. 106, by which it is enacted,

(a) Lords S. O. No. 230.

that “in any case where it is intended to make an appli-
“cation to Parliament for an act for the establishment
“of any waterworks, or for draining, paving, cleansing,
“lighting, or otherwise improving any town, district or
“place, or for making, maintaining, or altering any burial
“ground or cemetery; or for continuing, altering, or en-
“larging any of the powers or provisions contained in any
“act or acts relating to any of the purposes aforesaid;
“a notice in writing of such intention to apply to Par-
“liament in the next ensuing session, for an act for any
“of the above objects shall, on or before the last day of
“November in each year, be sent or delivered to the office
“of Woods and Forests, accompanied by a statement of the
“intended object of the proposed act, with such plans, &c.,
“as are required by the Standing Orders of either House
“of Parliament” (a).

The Commissioners of Woods and Forests, on being satisfied with the security for payment of the expenses, may appoint one or more person or persons of competent skill to be a surveying officer or officers for that purpose (b), who shall give notice of the proposed inquiry (c), and shall have power to summon witnesses (d) and administer oaths: which powers are enforced by a penalty (e). The expenses of the inquiry are to be paid by the promoters of the undertaking, and are to be certified by the surveying officer (f).

In accordance with the views of the Committee under the second head, the Standing Orders were revised, and the Speaker was authorized to appoint, and in pursuance thereof has appointed two officers, called “The Examiners of Peti-
“tions for Private Bills.” The examination of petitions for private bills, was appointed to commence on the 15th of January, and the compliance with the Standing Orders to be proved before the Examiners (g). It is now in operation, and is found to work well.

The important recommendation in the Report of the Com-

(a) Section 1.

(b) By sect. 2.

(c) Sect. 3.

(d) By sect. 4.

(e) By sect. 5.

(f) Sect. 6.

(g) Com. S. O. Nos. 1 and 2.

mittee on Private Bills; "of the taxation of Parliamentary costs, by a proper taxing officer, such as is attached to "Courts of Justice;" has not yet been carried out, though the examination of bills of this nature, before a competent tribunal, is universally felt to be desirable. The statement in the report, that there is no officer appointed for the taxation of costs in the case of Private Bills, is not, it should be observed, strictly accurate. Mr. Speaker possesses, and has exercised the power of nominating persons to tax such costs, on the application of the *promoters* of the undertaking; but not, when it is most wanted, and would be fittest, at the requisition of their *opponents*. The real *desideratum* in the matter, is the appointment of a competent taxing Master or Masters, for both Houses of Parliament, in the person of an experienced barrister or solicitor, or both, conversant with the whole subject of fees and costs; acquainted with the principles, and habitually exercised in the practice, of taxation. Such officers would be required to devote themselves exclusively to the important subject of settling and establishing a reasonable scale of charges and allowances, with a view to diminish the enormous expenses at present attendant upon the passing of private bills. And, in the periods of intermission of their other labours, the examiners of petitions might be usefully associated with them.

Pursuant to the recommendations of the committees of both Houses on Railway Act Enactments, an act passed in the last session, "for constituting Commissioners of "Railways," under which commissioners have been appointed (a).

Duties of
examiners.

As regards the duties of the examiners of petitions for private bills, it is provided by certain new Standing Orders of the House of Commons, made in 1846,—

"That the examination of the petitions shall commence on the 15th January, in such order and according to such regulations as shall be made by Mr. Speaker, and the chief examiner shall make arrangements for the distribution of the business amongst the examiners.

Notice to be
given of day

"That the chief examiner shall give at least seven clear days' notice in the Private Bill Office of the day appointed for the

(a) 9 and 10 Vict. c. 105.

examination of each petition; and in case the promoters shall not appear at the time when the petition shall come on to be heard, the examiner to whom the case shall have been allotted, shall strike the petition off the list, and shall not re-insert the same, except by order of the House.

appointed for examination.

“ That the compliance with the following Standing Orders, shall be proved before one of the examiners of petitions for private bills, and any parties shall be at liberty to appear and be heard, by themselves, their agents and witnesses, upon any memorial addressed to the examiner, complaining of a non-compliance with the Standing Orders, provided the matter complained of be specifically stated in such memorial, and that the party affected by the non-compliance with the Standing Orders, shall have signed such memorial, and that such memorial be deposited in the Private Bill Office three clear days before the day first appointed for the examination of the petition.

Compliance with Standing Orders to be proved.

“ That in the case of any application for a private bill relating to England, the examiner may admit proof of the compliance with the Standing Orders which refer to the affixing to the church doors the requisite notices, and the applications to owners, lessees and occupiers, on the production of affidavits sworn before a justice of the peace, unless the examiner shall require further evidence.

How proved.

“ That in the case of any application for a private bill relating to Scotland, the examiner may admit proof of the compliance with the Standing Orders which refer to the affixing to the church-doors the requisite notices, and to the applications to owners, lessees and occupiers, on the production of affidavits sworn before any sheriff-depute, or his substitute there, unless the examiner shall require further evidence.

“ That in the case of any application for a private bill relating to Ireland, the examiner may admit proof of the compliance with the Standing Orders of the House, on the production of affidavits sworn before any judge or assistant barrister of that part of the United Kingdom, unless the examiner shall require further evidence.

“ That the examiner shall certify by indorsement on each petition, which shall have been deposited in the Private Bill Office, whether the Standing Orders have or have not been complied with; and when they have not been complied with, he shall also report to the House the facts upon which his decision is founded, and any special circumstances connected with the case” (a).

“ That all petitions for additional provision in private bills, with the proposed clauses annexed, and all estate bills brought from the House of Lords, after having been read a first time, be referred to the examiner of petitions for private bills” (b).

To report on cases of additional provisions, and of estate bills.

“ That in all cases of petitions for additional provision in private

(a) Com. S. O. Nos. 9, 10, 11, 12, 13, 14, 15. (b) Ib. No. 114.

To report
whether Stand-
ing Orders
complied with.

bills and of estate bills brought from the House of Lords and referred to the examiner, he shall report to the House whether the Standing Orders have or have not been complied with; and, when they have not been complied with, the facts upon which his decision is founded, and any special circumstances connected with the case.

To make
special report
in certain cases.

“That in case the examiner shall feel doubts as to the due construction of any Standing Order in its application to a particular case, he shall make a special report of the facts to the House, without deciding whether the Standing Order has or has not been complied with; and in such case he shall indorse the petition with the words “Special Report;” either alone, or if non-compliances with other Standing Orders shall have been proved, in addition to the words ‘Standing Orders not complied with’ ” (a).

As examiners of petitions are designed to supersede and take place of sub-committees on petitions for private bills, and to liberate a large number of members of the House of Commons from the attendance before required of them to receive proofs of compliance with the Standing Orders; a brief account of the nature and duties of such sub-committees, is still essential to a right understanding of the substituted functions of the examiners.

Select commit-
tee on petitions
for private bills.

In the year 1846, and during several previous sessions of Parliament, all petitions for private bills, and for additional provision, were referred by the House to the Select Committee on petitions for private bills, appointed at the commencement of each session. It consisted of forty-two members, five of whom were a *quorum* in opposed cases, and three in unopposed cases. To facilitate its proceedings, it might divide itself into sub-committees of not less than seven members; by one of which sub-committees every petition for a bill was undertaken, instead of being dealt with by the whole committee.

Sub-commit-
tees,

Compliance
with Standing
Orders to be
proved before
Sub-commit-
tees,

The duty of these sub-committees was, to require proof of compliance with the Standing Orders. If parties opposing a bill, presented a petition to the House, within a stated time before the first meeting of the sub-committee, complaining that the Standing Orders had not been complied with, the petition was referred to the committee, and the parties were at liberty to be heard by themselves, their

(a) Com. S. O. Nos. 16, 17.

Parliamentary agents and witnesses; provided the matter complained of were specifically stated in their petition. The sub-committee reported on the petition, that the Standing Orders had, or had not, been complied with; or, that there were no Standing Orders applicable to the bill; with any facts and special circumstances connected with the case.

By a Standing Order of the House of Commons of a later period (*a*), compliance with the Standing Orders shall be proved before one of the Examiners, upon any memorial addressed to the Examiner; provided the party affected by the non-compliance, have signed such memorial, and deposited it within a prescribed time. The examiner certifies by indorsement on each petition when the Standing Orders have been complied with, and reports specially where they have not. All reports of the examiners of petitions for private bills, are directed by an Order of the House, to be referred to the select committee on Standing Orders(*b*).

Now before
examiners.

It has been already stated that no private bill is allowed to be brought into the House of Commons, but upon a petition first presented, with a printed copy of the proposed bill annexed: and that such petition must be signed by the parties or some of them, who are suitors for the bill; to which another requisite was added on the recent revision of the Orders. It is now required, on the presentation of the petition, that it be duly indorsed by the examiners of petitions for private bills (*c*); and it must be presented on or before the day appointed by the House, at the commencement of the session (*d*). By a resolution of the present session, it must be presented within three days after it shall have been indorsed by the examiner.

Who must
indorse the
petition.

If the Standing Orders have been complied with (and are so certified by the due and regular indorsement of the examiner of petitions); leave will be given to bring in the bill in the usual way; but if not, the report of the examiners

(*a*) Com. S. O. No. 91.

(*b*) Ib. No. 115.

(*c*) Ib. No. 112.

(*d*) Ib.

is to be referred to “the select committee on Standing Orders.”

Standing
Orders com-
mittee.

They report
whether House
should give
leave to
proceed.

The Standing Orders Committee is nominated at the commencement of every session, and consists of *eleven* members, of whom *five* are a *quorum* (a). They determine and report to the House whether the Standing Orders, which appear by the report of the examiners not to have been complied with, ought or ought not to be dispensed with, and whether in their opinion the parties should be permitted to proceed with their bill, or any part it (b), and if so, upon what conditions.

In cases where the Standing Orders have been substantially complied with, and that publicity, which is their real object, effectually attained, without a literal observance of the prescribed forms, upon a favourable report from the committee on Standing Orders, “that it is expedient to “extend the indulgence of the House to such case, by “accepting the partial compliance with the Standing Orders;” the House, which rarely takes narrow views of such subjects, and never regards merely formal objections with any degree of favour, will usually give leave to bring in the bill. Where this is impracticable, where owing to ignorance or inadvertence, some indispensable step has been altogether omitted, application must be made for leave to give the notices, &c. forthwith; or, as it is technically termed, *nunc pro tunc*. This petition also is referred to the Standing Order Committee. Until the Standing Order Committee have made their report, no further proceedings can be taken. On the Standing Order Committee reporting favourably, an order will be made for leave to give the notices *instanter*; which being executed, a new petition is presented, and the necessary steps are progressively taken.

If notices not
given, petition
to give them
now.

The ulterior proceedings are pointed out in the latter of these amended Standing Orders of the House of Commons:

“When any special report from the examiner of petitions, as to the construction of a Standing Order, shall have been referred to the

(a) Com. S. O. No. 4.

(b) Ib. No. 57.

select committee on Standing Orders, they shall determine according to their construction of the Standing Order, and on the facts stated in such report, whether the Standing Orders have or have not been complied with, and they shall then either report to the House that the Standing Orders have been complied with, or shall proceed to consider the question of dispensing with the Standing Orders, as the case may be.

“ When any petition for leave to dispense with any of the Sessional Orders of the House relating to private bills, shall have been referred to the select committee on Standing Orders, they shall report to the House whether such Sessional Orders ought, or ought not, to be dispensed with (a).

“ All petitions for leave to dispense with any of the Sessional Orders of the House relating to private bills, and also all petitions for the re-insertion of petitions for private bills in the examiner's list shall be referred to the select committee on Standing Orders (b).

“ When any petition for the re-insertion of any petition for a private bill in the examiner's list, shall have been referred to the select committee on Standing Orders, they shall report to the House whether in their opinion, such petition ought or ought not to be re-inserted, and, if re-inserted, under what (if any) conditions.” (c).

If the Standing Orders Committee report that indulgence should be granted to the promoters of the bill, they are allowed to proceed at once, or after complying with the prescribed conditions. A member moves that the report be read, and then, that leave be given to bring in the bill. If the committee report that the Standing Orders ought not to be dispensed with, their decision is almost invariably fatal to the bill; though parties may still petition the House for leave to proceed, but with so little probability of success that it is scarcely ever attempted, and has only been granted, with the consent of all parties, and under very peculiar circumstances. The House agree at once to the report in favour of indulgence; the unfavourable reports, are only ordered to lie upon the table.

When they state that Standing Orders should not be dispensed with; fatal to bill.

When leave has been obtained to bring in a bill, it may be presented without delay, printed on paper of a size to be determined on by Mr. Speaker, (heretofore folio size),

Printed bill presented.

(a) Com. S. O. Nos. 58, 59.
(b) Ib. No. 116.

(c) Ib. No. 60.

with a cover of parchment, upon which the title of the bill is written ; and the short title of the bill, as first entered on the votes, shall correspond with that at the head of the advertisement, and shall not be changed unless by special order of the House (*a*).

Amounts in
Italics.

The proposed amounts of rates, tolls, &c., which formerly used to be left in blanks, are now ordered to be inserted in italics, in the printed bill (*b*).

First reading.

The bill may be read a first time immediately after it is presented, in case printed copies of the bill have previously been delivered to the doorkeepers, for the use of members.

Printed copies
delivered for
members.

Name bills, (and formerly naturalization bills), which are generally sent from the Lords, are an exception to the rule requiring copies to be printed and delivered before the first reading (*c*). Copies also, are to be delivered at the Public Bill Office, and to be sent to the Private Bill Office for the use of the Board of Trade (*d*). A day is named by the House at the beginning of every session, after which no private bill can be read a first time.

Time limited
for first read-
ing.

Before second
reading three
clear days.

There must be an interval of three clear days between the first and second reading of every private bill. Notice in writing of the day proposed for the second reading, must be given by the agent soliciting the bill, to the clerks of the Private Bill Office, three clear days before the second reading (*e*).

Bill examined
in Private Bill
Office.

A private bill after it has been read the first time, is in the custody of the clerks of the Private Bill Office, until laid upon the table for the second reading (*f*). During this interval the bill, according to its priority, is examined as to its conformity with the rules and Standing Orders of the House. And if not in due form, the examining clerk specifies on the bill, the page in which any irregularity occurs.

Withdrawn, if
informal.

If the bill be reported defective, or at variance with the Standing Orders, or not within the order of leave, the

(*a*) Com. S. O. No. 117.

(*b*) Ib. No. 118.

(*c*) Ib. No. 119.

(*d*) By Speaker's Order, see May, 406.

(*e*) Com. S. O. Nos. 120. 147.

(*f*) Ib. No. 145.

order for the first reading is discharged, the bill is withdrawn, and leave is given to bring in another bill (*a*).

In the examination of all private bills, the clerks are particularly directed to take care that the names of peers are not to be inserted either as trustees, commissioners, or proprietors of any company, where rates, tolls, or duties upon the subject, are to be levied (*b*). Peer's names struck out.

It is ordered, that no private bill be read a second time, until after the expiration of two calendar months from the day on which the last notice was given in the newspaper (*c*). Must be two months from last notice in the paper.
A breviate of every private bill prepared under the direction of the Speaker, by Mr. Speaker's counsel, containing a statement of the objects of the bill, and a summary of its proposed enactments, and pointing out any deviation from the general law which will be effected by the bill, must have been laid upon the table of the House, and have been printed three clear days before the second reading can take place. These rules do not apply to bills brought from the Lords, (divorce, estate bills, &c.), and not relating to crown, church, corporation, or trust property (*d*). Breviate.

It is ordered by the Commons:—

“That no private bill, or clause, for the particular interest or benefit of any person or persons, county or counties, corporation or corporations, or body or bodies of people, be read a second time, unless fees be paid for the same” (*e*). Payment of fees.

On every petition presented to the House for or against a bill, the name and short title of the bill is to be written at the beginning thereof; and whether in favour of the bill, or opposed to it (*f*). Petition for or against.

The second reading is the same important stage of the bill, by which the principle is affirmed, and the general expediency of passing the bill, admitted; as in the case of public bills. Second reading.

When a private bill has been read a second time, it is immediately committed and referred to the Committee of Bill committed.

(*a*) May, 407.

(*b*) Speaker's Order, 24 March, 1840.

(*c*) Com. S. O. No. 122.

(*d*) Ib. Nos. 123, 134.

(*e*) Ib. No. 125.

(*f*) Ib. No. 121.

Selection, except a divorce bill, which is referred to the Select Committee on divorce bills (*a*). By a revised order of last session, it is provided—

Committee of Selection.

“That the chairman of the select committee on Standing Orders, and the members of the general committee of elections, shall ex officio constitute a committee, to be denominated ‘The Committee of Selections,’ of whom three shall be a quorum” (*b*).

Opposed bills.
Unopposed bills.

The House delegate to the Committee of Selection the power of appointing committees on private bills, subject to certain rules, and directions of the Standing Orders. Different regulations apply to opposed and to unopposed bills. Bills are to be considered as unopposed bills, where no petition has been presented in which the petitioners pray to be heard by themselves, their counsel or agent; unless the chairman of ways and means have reported to the House, that in his opinion any bill referred to him should be treated as an opposed bill (*c*). For the committee of selection, refer every unopposed bill to the chairman of the committee of ways and means, together with the members ordered to prepare and bring in the bill; or in the case of bills brought from the Lords, together with not less than two other members named by the committee of selection (*d*).

Petitions against opposed bills.

Petitions against a bill should be presented as early as possible after the second reading, in order that the bill may be treated as an opposed bill, and be referred to the proper tribunal.

Speaker's list, for committees, what.

“Lists for committees on private bills” are prepared by the Speaker, by which the members for counties, cities and boroughs, are classified according to the local position of the places which they represent. Each county has a list assigned to it, consisting generally of about twenty members, whose constituents, in neighbouring counties, are supposed to have a local interest in all bills relating to that particular division. The committee of selection refer an opposed bill to the Speaker's list of that county, or that

(*a*) Com. S. O. No. 126.
(*b*) Ib. No. 4.

(*c*) Ib. No. 66.
(*d*) Ib. No. 67.

division of a county, to which the bill specially relates, and to such number of members not locally interested in the bill, as the circumstances of the case shall in their judgment require (*a*). The committee of selection also direct what number of the members not locally interested in the bill, but selected and added to the Speaker's list by the committee of selection shall be a *quorum* of such members (*b*). The members on the Speaker's list have a local interest; the selected members are unconnected with the place to which the bill relates.

Selected
members.

When the name of a member has been added by the committee of selection to the Speaker's list, he is served by the committee clerk with notice of the nomination, as soon as possible, and of the time at which the committee on the bill is appointed to meet (*c*).

Members have also, been added by the House (*d*); and where a bill cannot be referred, from its character, to any particular list, as having no locality, it has been referred to members specially named (*e*).

The committee of selection, (subject to an order of the House (*f*), that there be seven clear days between the second reading of every private bill, and the sitting of the committee thereupon), fix the time for holding the first sitting of the committee on the bill. Yet, sometimes, the House give leave for the committee to sit and proceed on an earlier day than that authorized by the Standing Orders.

First meeting
of committee
on bill
appointed.

Notice of the day and hour appointed for the meeting of the committee must be given, in writing, by the clerk to the committee of selection, to the clerks in the Private Bill Office. In the case of a recommitted bill, the notice is a three days' notice, which is given by the agent for the bill (*g*).

Notice.

It is also required by an order of the House---

"That a filled-up bill, signed by the agent for the bill, as proposed

Filled up bill
deposited.

(*a*) Com. S. O. No. 63.

(*b*) Ib. No. 64.

(*c*) Ib. No. 65.

(*d*) May, 410.

(*e*) Townsend Peerage Bill,
1843.

(*f*) Com. S. O. No. 127.

(*g*) Ib. No. 148.

to be submitted to the committee on the bill, and in the case of a re-committed bill, a filled-up bill, as proposed to be submitted to the committee on recommitment, be deposited in the Private Bill Office one clear day before the meeting of the committee on every private bill; and that all parties shall be entitled to a copy thereof, upon payment of the charges for making out amendments of such bill" (a).

Also—

Notice of postponement of first meeting.

"That notice, in writing, be given by the clerk to the committee of selection, to the clerks in the Private Bill Office, of the postponement of the first meeting of any committee on a private bill, which shall have been referred to such committee, on the day on which such postponement is made; and that in the case of bills not referred to the committee of selection, *one* clear day's notice be given by the agents for the bill to the clerks in the Private Bill Office of such postponement" (b).

Declarations signed by members.

On an opposed private bill, every member on the Speaker's list, must sign a declaration that he will never vote on any question which may arise, without having duly heard and attended to the evidence relating thereto. A selected member further declares that his constituents have no local interest, and that he, has no personal interest therein. The signed declaration must be delivered to the committee clerk, before the door is locked for the appointment of a chairman; otherwise, the member shall not attend or vote (c).

Quorum.

Five members are the *quorum* of every committee on an opposed private bill, including the *quorum* of selected members as determined by the committee of selection. Not only must there always be present, a *quorum* of the whole committee, but also the *quorum* of selected members (d).

Commence proceedings.

At the end of ten minutes after the time appointed for the first sitting of the committee, so soon as there shall be present five members, (including a *quorum* of selected members), the room is cleared of all strangers, the door is locked, and the members then present, proceed to appoint the chairman, who must be one of the selected members (e).

Elect chairman.

(a) Com. S. O. No. 149.
(b) Ib. No. 150.
(c) Ib. No. 70.

(d) Ib. No. 5.
(e) Ib. No. 77.

The chairman of the committee on the bill, is specially directed by the Standing Orders, to observe that there is always present a *quorum* of selected members: and to suspend the proceedings, when the proper number is not in attendance. If, on the expiration of an hour, from the time fixed for the meeting of the committee, or from the time to which he has suspended the proceedings, a *quorum* of the selected members, shall not be present, he is to adjourn the committee for any period he may think fit (a).

His duties.

If, from accidental circumstances, a *quorum* of members cannot attend, the chairman reports the case to the House, and as the exigency of the case may require (b), leave is usually given for the remaining members to proceed with a smaller general *quorum*, or a smaller *quorum* of selected members.

Absence of members.

The House refer to the committee on the bill, all petitions in which the petitioners pray to be heard against a private bill. And it is ordered "that the petitioners be heard by themselves, their counsel or agents, if they think fit; and that counsel be heard in favour of the bill, against the said petitions."

Petition against bills, referred to committee.

Every petition against a bill must be presented to the House, three clear days before the day appointed for the first meeting of the committee; unless the petitioners complain of any matter which has arisen during the progress of the bill before the committee (c). The petitioners cannot be heard, if their petition was presented after the time specified, without a special instruction from the House.

When such to be presented.

The committee have no power to examine into the compliance or non-compliance with such Standing Orders as are directed to be proved before the examiners of petitions (d), unless by special order of the House. No petition will be taken into consideration by the committee, unless it distinctly specify the grounds on which the

Committee not to examine into compliance with Standing Orders which are to be proved before examiners.

(a) Com. S. O. No. 76.

(b) Ib. No. 77.

(c) Ib. No. 79.

(d) Ib. No. 84.

Grounds of objection to be specified.

petitioners object to any provisions of the bill (*a*); and the petitioners will be heard on such grounds only. But the committee may call for a more specific statement of the same objections in writing.

Committee on unopposed bills.

A *quorum* in committee on unopposed private bills, consists of the chairman of ways and means, and one of the other members (*b*), and they proceed to consider the provisions of the bill, and to take care that they are conformable to the Standing Orders. The chairman, as being an officer of the House, is intrusted with the special duty of examining every unopposed private bill (*c*). A filled up bill signed by the agent, is laid by him before the chairman, at the time of giving notice of the meeting of the committee, and similar copies are laid by the agent before the other members of the committee, three days before the first meeting (*d*). If it should appear to the chairman, that the bill from its nature, or the circumstances attending it, ought to be investigated before a more public tribunal, and treated as an opposed bill, he reports his opinion to the House; and the bill is referred to the committee of selection, and dealt with by them as an opposed bill (*e*).

Duties of the committee.

Orders applying to all committees.

Such are the orders applying specially to the proceedings of the committee on unopposed bills. But there are various orders which are binding upon all committees on private bills, whether the same be opposed or unopposed.

Reports from Board of Trade referred to committee on the bill.

After a committee on a bill has been formed, no members are to be added thereto, unless by a special order of the House (*f*). If any report made under the authority of the Board of Trade upon any bill or the object thereof, have been laid before the House, such report shall be referred to the committee on the bill (*g*).

Names of members to be entered on minutes.

The names of the members attending a committee, are directed to be entered by the clerk on the minutes. And

- (*a*) Com. S. O. No. 78.
- (*b*) Ib. Nos. 6. 80.
- (*c*) May, 415.
- (*d*) Com. S. O. No. 82.

- (*e*) Ib. No. 81.
- (*f*) Ib. No. 8.
- (*g*) Ib. No. 128.

when a division takes place, the clerk is to note down the name of every member, distinguishing on which side of the question he voted. These minutes are given into the House together with the report (*a*).

When, as has sometimes occurred, the House have on the report of the Standing Orders Committee, allowed parties to proceed with their bill on compliance with the Standing Orders before neglected, the House have empowered the committee on the bill to inquire whether the Standing Orders have been complied with, instead of formerly, referring the case to the committee on petitions,—or now, of having it re-inserted in the examiner's list.

Proof of Standing Orders, before committee only on special order.

The compliance with Standing Orders, or the proofs of consents of parties concerned in interest, are proved in bills relating to Scotland, by affidavits sworn before a sheriff-depute, or his substitute there (*b*); in private bills relating to Ireland, by affidavits sworn before a judge or assistant barrister (*c*). In other instances, the consents of parties interested, may be proved by the production of certificates in writing, of the parties, whose signature must be proved by one or more witnesses (*d*).

Mode of proof of Orders and Consents.

It is a paramount duty of the committee, to take care that the following provisions required by the Standing Orders, shall be included in a bill committed to them, wherever they are applicable. In all bills for carrying on works by a company, &c., a clause compelling payment of subscriptions (*e*). In all bills by which tolls, &c., may be levied, clauses providing for the following objects:—
1. Security to be taken from the treasurer. 2. Accounts to be kept. 3. And to be audited. 4. Accounts, vouchers, &c., to be produced to auditors. 5. Auditors to be remunerated out of the fund. 6. Account in abstract, to be transmitted to clerk of the peace, on or before the 31st of January, in each year (*f*).

Payment of subscriptions. Where tolls levied, accounts and audit.

(*a*) Com. S. O. No. 83.

(*b*) Ib. No. 85.

(*c*) Ib. No. 86.

(*d*) Ib. No. 87.

(*e*) Ib. No. 88.

(*f*) Ib. No. 89.

Level of roads;
and fence to
bridges.

"That where the level of any road shall be altered in making any public work, the ascent of any public carriage road shall not be more than one foot in thirty feet; and that a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected" (a).

There are other orders relating to bills of a particular description. The following resolutions have been passed in the present session of Parliament, 1847, in regard to—

RAILWAY BILLS.—3rd February.—1. *Resolved*, "That a committee of five members be appointed, to be called The Classification Committee of Railway Bills, to consist of the following members:—A. B., C. D., E. F., G. H., and I. K.; and that three be the *quorum* of the said committee.

2. *Resolved*, "That copies of all petitions for railway bills presented to the House, be laid before the said committee.

3. *Resolved*, "That the Committee of Classification shall form into groups, all railway bills which, in their opinion, it would be expedient to submit to the same committee.

4. *Resolved*, "That as soon as the Committee of Classification shall have determined what railway bills are to be grouped together, they shall report the same to the House, and all petitions against any of the said bills, shall be presented to the House three clear days before the meeting of the committee thereon.

5. *Resolved*, "That there be no more than seven clear days between the first reading of any railway bill and the second reading thereof, except by Special Order of the House.

6. *Resolved*, "That the breviat of every railway bill shall be laid on the table of the House, and be printed and delivered one clear day before the second reading.

7. *Resolved*, "That such railway bills as shall have been read a first time before the House shall agree to these resolutions, shall be read a second time within seven clear days thereafter.

8. *Resolved*, "That such of the Standing Orders as relate to the composition of the committees on private bills, and the Orders consequent thereon, be suspended, so far as regards railway bills pending, in the course of the present session.

9. *Resolved*, "That committees on railway bills, during the present session of Parliament, shall be composed of a chairman and four members, to be appointed by the Committee of Selection.

10. *Resolved*, "That each member of a committee on a railway bill or bills, shall, before he be entitled to attend and vote on such committee, sign a declaration that his constituents have no local interests, and that he himself has no personal interest for or against

(a) Com. S. O. No. 90.

any bill referred to him; and no such committee shall proceed to business until the whole of the members thereof shall have signed such declaration. Railway bills.

11. *Resolved*, "That the promoters of a railway bill shall be prepared to go into the committee on the bill, on such day as the Committee of Selection shall, (subject to the Order that there be seven clear days between the second reading of every private bill and the sitting of the committee thereupon), think proper to appoint, provided that the Classification Committee shall have reported on such bill.

12. *Resolved*, "That the Committee of Selection shall give each member not less than fourteen days' notice of the week in which it will be necessary for him to be in attendance, for the purpose of serving, if required, on a railway bill committee.

13. *Resolved*, "That the Committee of Selection shall give each member a sufficient notice of his appointment as a member of a committee on a railway bill, and shall transmit to him a copy of the tenth resolution, and a blank form of the declaration therein required, with a request that he will forthwith return it to them properly filled up and signed.

14. *Resolved*, "That if the Committee of Selection shall not within due time receive from each such member the aforesaid declaration, or an excuse which they shall deem sufficient, they shall report to the House the name of such defaulting member.

15. *Resolved*, "That the Committee of Selection shall have the power of substituting, at any time before the first meeting of a committee, another member for a member whom they shall deem it proper to excuse from serving on that committee.

16. *Resolved*, "That power be given to the Committee of Selection to send for persons, papers, and records, in the execution of the duties imposed on them by the foregoing resolutions.

17. *Resolved*, "That no member of a committee shall absent himself from his duties on such committee, unless in the case of sickness or by leave of the House.

18. *Resolved*, "That all questions before committees on railway groups or bills shall be decided by a majority of voices, including the voice of the chairman; and that, whenever the voices shall be equal, the chairman shall have a second or casting vote.

19. *Resolved*, "That if the chairman shall be absent from the committee, the member next in rotation on the list, who shall be present, shall act as chairman.

20. *Resolved*, "That committees shall be allowed to proceed so long as three members shall be present, but not with a less number, unless by special leave of the House.

21. *Resolved*, "That if on any day within one hour after the time

Railway bills.

appointed for the meeting of a committee three members shall not be present, the committee shall be adjourned to the next day on which the House shall sit, and then shall meet at the hour on which such committee would have sat had no such adjournment taken place.

22. *Resolved*, "That in the case of a member not being present within one hour after the time appointed for the meeting of the committee, or of any member absenting himself from his duties on such committee, such member shall be reported to the House at its next sitting.

23. *Resolved*, "That each committee shall be appointed to meet on each day of its sitting not later than twelve o'clock, unless by the regular vote of the committee.

24. *Resolved*, "That committees on railway bills have leave to sit in the present session, notwithstanding any adjournment of the House, if the committees shall so think fit.

25. *Resolved*, "That it be an instruction to all committees upon private bills, not to hear parties on any petition hereafter referred to them, which shall not be prepared and signed in strict conformity with the Rules and Orders of this House.

26. *Resolved*, "That all Select Committees on railway groups or bills, be empowered to refer, if they shall so think fit, to the chairman of Ways and Means, together with the members ordered to prepare and bring in each such bill, any unopposed railway bills submitted for their consideration, and that such bills be severally dealt with by the said chairman, and those members respectively acting with him, as other unopposed bills are to be dealt with.

27. *Resolved*, "That the following clause be inserted in all railway bills passing through this House:—

"And be it further enacted, That nothing herein contained shall be deemed or construed to exempt the railway by this or the said recited acts authorised to be made, from the provisions of any general act relating to such acts, or of any general act relating to railways now in force, or which may hereafter pass during this or any future session of Parliament, or from any future revision and alteration, under the authority of Parliament of the *maximum* rates of fares and charges authorised by this act."

And the following change has been made in the present session. On the 4th February, the Standing Order, No. 13, was read as follows:—

13. "That in the case of any application for a private bill relating to Scotland, the examiner may admit proof of the compliance with the Standing Orders which refer to the affixing to the church doors the requisite Notices, and to the applications to owners, lessees, and occupiers, on the production of affidavits sworn before any sheriff

depute or his substitute there, unless the examiner shall require further evidence. Railway bills.

“ When it was *Ordered*, That the said Standing Order be repealed.

“ *Ordered*, That in the case of any application for a private bill relating to Scotland, the examiner may admit proof of the compliance with the Standing Orders of the House, on the production of affidavits sworn before any sheriff-depute or his substitute there, unless the examiner shall require further evidence.

“ *Ordered*, That the said Order be a Standing Order of this House.”

The following provisions must be introduced, and rules observed, by every committee on a railway bill.

“ That in the case of a railway bill, no company shall be authorized to raise, by loan or mortgage, a larger sum than one-third of their capital; and that until fifty per cent. on the whole of the capital shall have been paid up, it shall not be in the power of the company to raise any money by loan or mortgage.

RAILWAY
BILLS.
Restrictions as
to mortgage.

“ That where the level of any road shall be altered, in making any railway, the ascent of any public carriage road shall not be more than one foot in thirty feet; unless a report from some officer of the Railway Department of the Board of Trade shall be laid before the committee on the bill, recommending that steeper ascents than the above may be allowed, with the reasons and facts upon which such opinion is founded, and the committee shall report in favour of such recommendation: also, that a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected.

Level of roads
and fence to
bridges.

“ That no railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connection with a stationary steam-engine, shall be made across any turnpike road or other public carriage-way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded” (a).

Not cross
turnpike roads.

Certain clauses, in regard to the deposit of amended plans with the clerks of the peace, in the case of all alterations of the original plan and section; so, limiting deviations from the common *datum* line, and the alteration of curves, &c., are required to be inserted in every railway bill.

(a) *Ib.* Nos. 96, 97, 98.

Certain objects and modes of inquiry are pointed out for the guidance of the committee upon a railway bill. Upon the following points, they are called upon by the Standing Orders to report specially upon all the matters enumerated:

- | | |
|--|---|
| Capital, &c. | 1. " <i>Capital and Loans.</i> —The proposed capital of the company formed for the execution of the project, and the amount of any loans which they may be empowered to raise by the bill. |
| Shares, &c. | 2. " <i>Shares and Deposits.</i> —The amount of shares subscribed for, and the deposits paid thereon. |
| Names, &c. of Directors. | 3. " <i>Names &c. of Directors.</i> —The names and places of residence of the directors or provisional committee, with the amount of shares taken by each. |
| Local Shareholders. | 4. " <i>Local Shareholders.</i> —The number of shareholders who may be considered as having a local interest in the line, and the amount of capital subscribed for by them. |
| Other parties, &c. | 5. " <i>Other Parties, &c.</i> —The number of other parties, and the capital taken by them. |
| Subscribers for 2000 <i>l.</i> &c. | 6. " <i>Subscribers for 2000<i>l.</i> and upwards.</i> —The number of Shareholders subscribing for 2000 <i>l.</i> and upwards, with their names and residences, and the amount for which they have subscribed. |
| Whether report from Board of Trade has been referred to the committee, &c. | 7. " <i>Whether Report from Board of Trade have been referred to the Committee, &c.</i> —Whether any report from the Board of Trade in regard to the bill, or the objects thereby proposed to be authorized, have been referred by the House to the committee, and if so, whether any and what recommendations contained in such report have been adopted by the committee, and whether any and what recommendations contained in such report have been rejected. |
| Assistant engines. | 8. " <i>Assistant Engines.</i> —What planes on the railway are proposed to be worked; either by assistant engines, stationary or locomotive, with the respective lengths and inclinations of such planes. |
| Engineering difficulties. | 9. " <i>Engineering Difficulties.</i> —Any peculiar engineering difficulties in the proposed line, and the manner in which it is intended they should be overcome. |
| Ventilation of tunnels. | 10. " <i>Ventilation of Tunnels.</i> —The length, breadth, and height, and means of ventilation, of any proposed tunnels, and whether the <i>strata</i> through which they are to pass are favourable or otherwise. |
| Gradients and curves. | 11. " <i>Gradients and Curves.</i> —Whether in the lines proposed, the gradients and curves are generally favourable or otherwise; and the steepest gradient, exclusive of the inclined planes above referred to, and the smallest radius of a curve. |
| Length and gauge of line. | 12. " <i>Length and Gauge of Line.</i> —The length of the main line of the proposed railway, and of its branches respectively, and on what gauge it is proposed to be constructed. |

13. "*Whether passing any Roads on a level.*—Whether it be intended that the railway should pass on a level any turnpike road or highway, and if so, to call the particular attention of the House to that circumstance. Whether passing any roads on a level.

14. "*Amount of Estimates, and whether adequate.*—The amount of the estimates of the cost or other expenses to be incurred up to the time of the completion of the railway, and whether they appear to be supported by evidence, and to be fully adequate for the purpose. Amount of estimates, &c.

15. "*Number of Assents, Dissents, and Neuters.*—The number of assents, dissents, and neuters upon the line, and the length and amount of property belonging to each class traversed by the said railway, distinguishing owners from occupiers; and in the case of any bill to vary the original line, the above particulars with reference to such parties only, as may be affected by the proposed deviation. Number of assents, dissents, and neuters.

16. "*Engineers examined.*—The name of each engineer examined in support of the bill, and of any examined in opposition to it. Engineers examined.

17. "*Allegations of Petitions in opposition.*—The main allegations of every petition which may have been referred to the committee in opposition to the preamble of the bill, or to any of its clauses; and whether the allegations have been considered by the committee, and if not considered, the cause of their not having been so. Allegations of petitions in opposition.

18. "*Fitness in an engineering point of view, and any other circumstances.*—And the committee shall also report generally as to the fitness, in an engineering point of view, of the projected line of railway, and any circumstances which, in the opinion of the committee, it is desirable the House should be informed of" (a). Fitness in an engineering point of view, &c.

The committee, on a bill for confirming letters patent, are scrupulously to require the observance of the Standing Order, "that there be a true copy of the letters patent "annexed to the bill" (b). Letters Patent bills.

Compliance with the Standing Orders which relate specially to bills for the inclosure and drainage of lands, will be examined into by the Committee on the bill. Proof of the notices required by the Standing Orders, and of the allegations in the preamble of such bill, may be made by affidavit, taken and authenticated according to the form prescribed in the schedule to the General Inclosure Act (c), unless the committee shall otherwise order (d). Inclosure and Drainage bills. Proofs.

The committee first require the agent to deliver in a Consent bill

(a) Com. S. O. No. 99.

(b) Ib. No. 100.

(c) 41 Geo. 3, c. 109.

(d) Com. S. O. No. 101.

signed by lord
of manor and
owners.

printed copy of the bill, signed by the lord of the manor, (where he is interested), though this is dispensed with, when he desires to remain neuter; and by such owners of property, as have assented thereto; (but the parties may sign separate bills, instead of one bill collectively); together with a list of the owners of property within the parish, showing the value according to the poor rate or land tax assessment (*a*).

And statement
of property
delivered in.

By occupiers
on drainage
bills.

In drainage bills the Standing Order extends to "occupiers" as well as "owners;" and omits the part relating to the lord of the manor (*b*)

Open space
for exercise.

Every bill for inclosing lands, must contain a clause containing a provision for leaving an open space, for exercise and recreation of the neighbouring population, &c. (*c*).

Commissioners
and intended
compensations.

The names of the commissioners to be appointed, and the compensation intended for the lord of the manor, the owners of tithes, &c., must be inserted in the copy of the consent bill presented to the House; as must also, clauses for settling the pay of the commissioners, and the audit of their accounts (*d*).

Disqualifica-
tion of certain
persons as
commissioners,
&c.

It is ordered, that no person shall be named a commissioner, umpire, surveyor or valuer, who shall be interested in the inclosure, &c.

Turnpike
Roads
(Ireland).
Qualification
in commis-
sioners.

The committee on a turnpike road bill relating to Ireland, are to attend to the insertion of a clause requiring a property qualification in the commissioners.

Professed
object of com-
mittee on bill.

The object of every committee upon a bill is, professedly, that the bill may be maturely considered in all its parts and bearings. It is with the detail, it is said, that the committee has to deal: The principle must be considered to have been already examined and pronounced upon. It remains only to discuss in committee, the best mode of carrying it into execution. This is the fit stage for examining suggestions for the improvement of the bill, in order to give greater efficacy to its provisions—for proposing any

(*a*) Com. S. O. No. 102.

(*b*) Ib. No. 103.

(*c*) Ib. No. 104.

(*d*) Ib. No. 105.

alterations or amendments, to guard the interests of those to be affected by it; for attentively considering the adaptation of means to their end,—of parts to the whole,—of the machinery to the invention. Such is the not unsound theory of the commitment of bills, and as respects public bills, the doctrine is supported by the practice in committees of the whole House. But with private bills, inasmuch as, by the evidence of the truth of the preamble being gone into before the committee, the committee *does* entertain the question whether the measure is expedient, or whether its proposed objects would be beneficial; it is obvious that an opportunity is afforded to the opponents of the measure of impugning the principle, as well as the provisions, of the bill before a committee. And, late as the period may appear, for considering the expediency of the measure, that course, under the existing system, seems inevitable. Indeed, the merits of a private bill can hardly be known, till the evidence for and against it, has been given before the committee.

The ordinary proceedings of a committee on a private bill, are the same as those of other select committees. When counsel are addressing the committee, or while witnesses are under examination, the committee room is an open court; but when the committee are about to deliberate, all the counsel, agents, witnesses and strangers, are ordered to withdraw, and the committee sit with closed doors. The chairman puts every question, which is determined by a majority of the committee; and when the members are equal, by the casting vote of the chairman; who in this, as in every other committee, (except election committees, and now by a new order of the present session railway committees), never votes except when there is an equality of votes.

Proceedings of
committees on
private bills.

When open
court.

When cleared.

When the committee have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concern them.

The first proceedings of a committee on an opposed bill,

Parties appear
before com-
mittee.

after the appointment of the chairman, is to call in all the parties. The counsel in support of the bill appear before the committee: the petitions against the bill are read by the committee clerk, and the counsel or agents in support of each, present themselves. Such persons as have petitioned for the insertion of particular provisions in a bill, or for leave to be heard by themselves or their agents against such parts of the bill as affect their rights and interests;—if their petitions were referred, as is usual, to the committee on the bill, are now to attend to be heard on their petitions. But petitions against the bill can only be heard on the precise grounds specified in their petitions. If no parties, counsel, or agents appear, when a petition is read, the opposition on the parts of the petitioners, is held to be abandoned; and unless they state their intention to oppose the bill, before the case is opened, they are not afterwards entitled to be heard, without special leave from the committee.

Case opened.

The case is opened for the promoters of the bill by their senior counsel, who, if the preamble be opposed, enters at large upon the question of the general expediency of the measure, and then calls witnesses to establish the allegations contained in the preamble. In a railway bill, this is the time to satisfy the committee, upon all the points which, by the Standing Orders they are obliged to report to the House.

Proof of
preamble.

On public bills, the preamble is discussed last; with private bills, the preamble is to be considered before any other part of the bill. The committee determine which of the petitioners have a real interest, or *locus standi*, before the committee, to entitle them to be heard against the preamble. When all the witnesses in support of the preamble have been examined, one of the counsel for the bill sums up the case for the promoters. After the petitioners against the bill have pursued the same course, the promoters of the bill have the reply.

Parties heard
against pre-
amble.

When the evidence upon the preamble has been heard, the room is cleared and a question is put: "That the pre-

“amble has been proved,” which question is affirmed or denied by the committee. If affirmed, the committee call in the parties and go through the bill, clause by clause, and fill up the blanks. No discussion takes place, except on those clauses which the opponents of the measure point out as objectionable; unless the committee disapprove them. But when petitions have been presented against a clause, or proposing amendments, the parties are heard in support of their objections or amendments, and the question is put upon them; but clauses are often postponed and considered at a later period.

Questions put upon preamble.

All amendments are set carefully down in a paper distinct from the bill, with a reference to the folio and the line, and a direction between or after what words they are to be inserted or omitted. So, any additional clause must be written on a separate sheet of paper, and be properly indorsed and ticketed. But it must always be remembered that the committee cannot admit amendments or clauses which are not within the order of leave, or which are not authorised by a previous compliance with the Standing Orders.

Amendments or additional clauses in committee.

The bill itself, is never defaced by erasure or interlineation. The amendments are first voted singly; then, all of them are read, and the question put whether the same shall be reported to the House. After the bill and amendments are gone through, and all the clauses considered and agreed upon, new clauses may be proposed.

If the proof of the preamble be negatived, the committee report at once to the House: “That the preamble of the bill has not been proved to their satisfaction.”

To prevent the necessity of this arbitrary reversal of the decision of the House in favour of the principle of the bill, upon the second reading, without any cause shown; a power has been given to committees to make alterations in the preamble, to meet the case really made out in evidence; but subject to certain limitations. Thus, 1. Nothing inconsistent with the notices given under the Standing Orders can be introduced. 2. Every alteration

Alteration in the preamble.

made in the preamble, must be specially noticed in the report to the House. 3. And the ground of making the alteration should be stated.

Duties of the chairman.

The particular duties of the chairman, in recording the proceedings of the committee, and reporting them to the House, as enjoined by the Standing Orders, are the following:—

Plan, &c. to be signed by the chairman.

“That every plan, and book of reference thereto, which shall be produced in evidence before the committee upon any private bill (whether the same shall have been previously lodged in the Private Bill Office, or not) shall be signed by the chairman of such committee with his name at length; and he shall also mark with the initials of his name every alteration of such plan and book of reference, which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the Private Bill Office.

So, committee bill and clauses.

“That the chairman of the committee do sign, with his name at length, a printed copy of the bill (to be called the Committee Bill), on which the amendments are to be fairly written; and do also sign, with the initials of his name, the several clauses added in the committee.

Chairman to report on alterations of bills, and consents.

“That the chairman of the committee shall report to the House, that the allegations of the bill have been examined; and whether the parties concerned have given their consent (where such consent is required by the Standing Orders) to the satisfaction of the committee.

Chairman to report bill to House; preamble proved or altered, &c.

“That the chairman of the committee shall report the bill to the House, whether the committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them; and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report” (a).

It is incumbent on the entire committee to take heed—

Minutes of committee.

“That the minutes of the committee on every private bill be brought up and laid on the table of the House, with the report of the bill” (b).

Special reports.

If extrinsic matters arise in, or are brought before the committee, which they desire to report to the House, the

(a) Com. S. O. Nos, 91-94.

(b) Ib. No. 95.

chairman should move the House that leave be given to the committee to make a special report, or the House may make it an instruction to the committee to make a special report.

If the committee on a railway bill, recommend steeper ascents to be allowed, than are specified in the Standing Orders, or that a railway should be made across a road on the level, they are to report their reasons. And in the case of a railway bill, there are sundry matters on which the committee are required to report specially, by a Standing Order of the House of Commons before cited (*a*).

On railway cases.

The duties enjoined upon a Select Committee in the case of Divorce bills, are also of a special nature. They are the following:—

Special duties of committee on divorce bills.

“ That the Select Committee on divorce bills, shall require evidence to be given before them that an action for damages has been brought in one of her Majesty’s Courts of Record, at Westminster, or in one of her Majesty’s Courts of Record in Dublin, or in one of her Majesty’s Supreme Courts of Judicature of the presidencies of Calcutta, Madras, Bombay, or the island of Ceylon, respectively, against the person supposed to have been guilty of adultery, and judgment for the plaintiff had thereupon; or sufficient cause to be shown to the satisfaction of the said committee why such action was not brought, or such judgment was not obtained.

“ That the Select Committee on divorce bills, shall, in all cases in which the petitioner for the bill has attended the House of Lords upon the second reading of the bill, require him to attend before them to answer any questions they may think fit that he should answer.

“ That the Select Committee on divorce bills shall report every such bill to the House, whether such committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them” (*b*).

The attendance of a witness before a committee on a private bill, can only be enforced by an order of the House.

Witnesses.

Sometimes the committee have leave given to report the minutes of evidence taken before them; when they may order

Evidence reported, printed.

(*a*) Com. S. O. No. 99. *Ante*, p. 408. (*b*) *Ib* Nos. 109, 110, 111.

it to be printed; at the expense of the parties in ordinary cases; in special cases, at the expense of the House.

Time limited
for reports.

A time is limited by the House at the commencement of every session, after which no report will be received from committees on private bills; but this time is occasionally extended. On application to the House, an extension of the time is sometimes allowed to particular committees and leave given to report on or before a certain (later) day.

Extended.

Adjournment
of committee.

Whenever a committee adjourns, it is the duty of the committee clerk to give notice in writing to the clerks in the Private Bill Office, of the day and hour to which the committee is adjourned (*a*). If a committee adjourn for a month, or any longer period, with an evident design of preventing a report in seasonable time, or of delaying the proceeding with the bill, the House has ordered the committee "to meet to-morrow and proceed on the "bill" (*b*).

Committees
revived.

If from the absence of a *quorum*, the committee be unable to proceed to business or to adjourn, or if the committee have not appointed a day to resume their sittings before the Serjeant-at-arms gives notice that the Speaker is at prayers, the committee must be revived by an order of the House.

Report.

When the report has been made out by the committee, it is ordered—

Amended bill
to be printed.

"That the committee clerk, after the report is made out, do deliver in to the Private Bill Office, a printed copy of the bill, with the written amendments made in the committee; in which bill, all the clauses added by the committee shall be regularly marked in those parts of the bill wherein they are to be inserted" (*c*).

"That every private bill, as amended in committee, excepting in the cases wherein the committee shall report the amendments to be merely verbal or literal, be printed at the expense of the parties applying for the same; and be delivered to the door-keepers for the use of the members, three clear days at least before the consideration of the report" (*d*).

(*a*) Com. S. O. No. 151.

(*b*) Com. J. 474 91. Ib. 195.

(*c*) Com. S. O. No. 153.

(*d*) Ib. No. 131.

But the amended bill must not be delivered, before the report of the bill has been made to the House. Delivered.

The chairman now reports the bill to the House with such amendments as the committee have made. The report is ordered to lie upon the table, and it is ordered—

“That a breviate of the amendments made in every committee on a private bill, be submitted to the chairman of the Committee of Ways and Means, and also laid upon the table of the House at least the day previous, to the consideration of the report of such bill” (a). Breviate of amended bills.

“That one clear day’s notice, in writing, be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the report of every private bill, and also for the consideration of the report of every private bill ordered to lie upon the table” (b). Notice of report, and of consideration of report.

“That when it is intended to bring up any clause, or to propose any amendment on the report, or the consideration of the report, or on the third reading of any private bill, notice shall be given thereof, in the Private Bill Office, on the day previous to such report, or consideration of the report, or third reading” (c).

“That when any clause or amendment is offered upon the report, or the consideration of the report, or the third reading of any private bill, such clause or amendment shall be printed: and when any clause is proposed to be amended, it shall be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets” (d). Clauses and amendments on report, &c.

“That when it is intended to bring up any clause, or to propose any amendment on the report, or the consideration of the report, or on the third reading of any private bill, the same be submitted to the chairman of the Committee of Ways and Means, on the day on which notice is given thereof in the Private Bill Office, and that no such clause or amendment be offered in the House, unless the same shall have been so submitted to the chairman of the Committee of Ways and Means, and he shall have reported to the House whether, in his opinion, the clause or amendment be such as ought or ought not, to be entertained by the House, without referring the same to the Select Committee on Standing Orders” (e).

“That when any clause or amendment upon the report, or the consideration of the report, or the third reading of any private bill, shall have been referred to the Select Committee on Standing Orders,

(a) Com. S. O. No. 130.

(b) Ib. No. 152.

(c) Ib. No. 154.

(d) Ib. No. 133.

(e) Ib. No. 132.

no further proceeding on either of such stages shall be had until the report of the said Select Committee shall have been brought up" (a).

When the bill has been reported, with the amendments, the House agrees or disagrees to the amendments of the committee; and may add new amendments of its own; but this is not encouraged, and can only be done, subject to certain rules and restrictions above stated;

Report of
Standing
Orders com-
mittee.

"When pursuant to these regulations, any clause or amendment proposed to any private bill on the report, or the consideration of the report thereof, shall have been referred to the Select Committee on Standing Orders, they shall report to the House whether such clause or amendment, be of such a nature as not to be adopted by the House without the recommitment of the bill, or of such a nature as to justify the House in entertaining it without recurring to that proceeding, or of such a nature as not in either case to be adopted by the House" (b).

Recommitted.

When bills are recommitted, they are referred to the former committee. In the case of a recommitted bill, three clear days' notice shall be given by the agent for the bill, to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee; and all proceedings of any committee of which such notice shall not have been given, will be void (c). A filled up bill, as proposed to be submitted to the committee on recommitment, must be deposited in the Private Bill Office one clear day before the meeting of the committee; and all parties will be entitled to a copy on payment of the charges for making out the amendments of such bill (d). Unless recommitted with express reference to particular provisions, the whole bill is open to reconsideration in committee (e).

After the third reading, it is too late to recommit a bill; and the only report made by the Standing Orders Committee is, whether the clause or amendment ought or ought not, to be adopted by the House at that stage. When a new clause or amendment is proposed, it must be printed,

(a) Com. S. O. No. 134.

(b) Ib. No. 61.

(c) Ib. No. 148.

(d) Ib. No. 149.

(e) May, 432.

and any clause proposed to be amended, shall be printed *in extenso*, as required by the Standing Order before set out, No. 133.

In order to afford opportunity for the proper discussion of reports on railway bills, the House proceeds to the consideration of reports on such bills every Tuesday and Thursday afternoon (a).

Railway bill reports.

When amendments are made by the House on the report, or consideration of the report, or on the third reading, they are entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill as amended in committee. That copy is signed by the clerk, and deposited and preserved in the office (b).

Entry of amendments on report.

When the report has been agreed to by the House, a private bill is ordered to be ingrossed like a public bill. And no private bill will be read a third time "Until a certificate is indorsed upon the paper bill, and signed by one or more of the examiners of ingrossments, declaring that the ingrossment thereof has been examined and agrees with the bill, as amended in committee, and on the consideration of the report" (c).

Ingrossment.

"It is provided that one clear day's notice in writing, be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the third reading of every private bill; and that no such notice be given until after the bill to which it relates shall have been reported, or the report thereof considered" (d).

Notice of third reading.

On the third reading, clauses and amendments may be offered, subject to the rules before stated. In other respects, the bill proceeds like a public bill, and if approved, is passed with the amendments and sent up to the House of Lords.

The following orders and regulations are deserving notice:—

"No private bill shall pass through two stages on one and the same day, without the special leave of the House" (e).

No bill to pass through more than one stage in a day.

(a) Com. S. O. No. 135.

(b) Ib. No. 156.

(c) Ib. No. 158.

(d) Ib. No. 155.

(e) Ib. No. 136.

Notice of dispensing with Standing Orders.

Notice of consideration of Lords' amendments.

LORDS.

Proceedings in the Lords on Private Bills sent up from the Commons

Committee for Standing Orders to be appointed every session.

Quorum.

All railway and opposed bills referred to them, to prove compliance with Standing Orders.

Petitions thereupon.

Reports what.

" (Except in cases of urgent and pressing necessity) no motion shall be made to dispense with any Sessional or Standing Order of the House without due notice thereof" (a).

" When any amendments made by the House of Lords to any private bill sent up to them, are to be taken into consideration, notice shall be given thereof in the Private Bill Office, the day previous to the same being proposed to be taken into consideration" (b).

Supposing private bills—of a proper description to commence in the Lower House, to have been sent up from the Commons, it becomes necessary to follow them in their progress through the House of Lords.

It is ordered by the lords spiritual and temporal in Parliament assembled:—

1. *To be appointed every session.*—" That at the commencement of every session of Parliament a Standing Order Committee shall be appointed, consisting of forty lords, besides the chairman of the committees of the House of Lords, who shall be always chairman of such Standing Order Committee.

2. *Quorum.*—" That three of the lords so appointed, including the chairman, shall be a quorum.

3. *Compliance with the Standing Orders in the case of railway and opposed bills, to be proved before committee.*—" That previous to the second reading of any private bill relating to such railways as are included in the second class, and previously to the sitting of the committee on any opposed bill, included in any of the three classes above mentioned, except bills for such railways as aforesaid, such bill shall be referred to the Standing Order Committee, before which the compliance with such of the Standing Orders as are hereafter required to be proved before the Standing Order Committee shall be proved.

4. *Parties may be heard upon petition, provided the matter complained of, be specifically stated.*—" That any parties shall be at liberty to appear, and to be heard by themselves, their agents and witnesses, upon any petition which may be referred to the Standing Order Committee complaining of non-compliance with the Standing Orders, provided the matter complained of be specifically stated in such petition, and that such petition be presented on or before the second day after the introduction of the bill into this House.

5. *Committee to report whether Standing Orders have been complied with.*—" That such committee shall report whether the Standing Orders

have been complied with, and if it shall appear to the committee that they have not been complied with, they shall state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the Standing Orders in such case.

6. *Notice of Meeting*.—"That three clear days' notice be given of the meeting of such committee" (a).

Notice of meeting

Unopposed bills are not referred to the Standing Orders Committee, but in their case, compliance with the Standing Orders, is proved before the committee on the bill: but railway bills included in the second class, form an exception to this rule; and, whether opposed or not, are referred to the Standing Orders Committee (b).

Un-opposed bills, except railway bills of the second class, not referred.

Some trifling variations are observable in the preliminary proceedings enjoined by the Standing Orders of the Upper House, from those of the Commons. Thus, as regards the contents of notices, they are required by the order of the Lords to contain, besides the names of the parishes, townships, &c., through which the work is intended to be made, *a description of all the termini*, together with the names of places (c). The affixing the notices on the door of Sessions' Houses, was before remarked as a diversity (d); so, the leaving copies of the Standing Orders of the House of Lords with the clerk of the peace, &c. (e).

Variation in notices and other preliminary proceedings.

Besides these trifling distinctions, there are some Standing Orders peculiar to the House of Lords, compliance with which must be proved. They relate to particular classes and descriptions of bills.

Standing Orders peculiar to Lords.

It is ordered by the Lords—

"That no bill to empower any company already constituted by act of Parliament to execute, undertake, or contribute towards any work other than that for which it was originally established, shall be allowed to proceed, unless the Committee on Standing Orders, when such bill shall be referred to that committee, or unless the committee on the bill, when the compliance with the Standing Orders is to be proved before such committee, shall have specially reported,—

Where new works applied for.

(a) Lords S. O. No. 224, § 2,
3, 4, 5, 6, 7.
(b) Ib. No. 219.

(c) Ib. No. 223, § 1.
(d) Ib. No. 223, § 2.
(e) Ib. No. 223, § 11.

Special meet-
ing of pro-
prietors.

1st. "That a draft of the proposed bill was submitted to a meeting of the proprietors of such company, at a meeting held specially for that purpose.

2nd. "That such meeting was called by advertisement, inserted for four consecutive weeks in the newspapers of the county or counties wherein such new works were proposed to be executed, or if there are no newspapers published in such county or counties, then in that of the nearest county wherein a newspaper is published.

3rd. "That such meeting was held at a period not earlier than seven days after the last insertion of such advertisement.

4th. "That at such meeting, the draft of the proposed bill was submitted to the proprietors then present, and was approved of by at least three-fifths of such proprietors.

"*Emendat. per Ord. 11 Augusti, 1842.*

"*Emendat. per Ord. 7 Augusti, 1845.*

"*Emendat. per Ord. 13 Februarii, 1846.*

"*Emendat. per Ord. 27 Augusti, 1846*" (a).

Proprietor
dissenting.

"That in case any proprietor of such company who, by himself or any person authorized to act for him in that behalf, shall have dissented at the meeting called in pursuance of the aforesaid Standing Order, No. 6, to empower any company, already constituted by act of Parliament, to execute any work other than that for which it was originally established, such proprietor shall be permitted, on petitioning the House, to be heard by the Committee on Standing Orders, on the compliance with the Standing Orders, by himself, his agents and witnesses, or by the committee on the proposed bill, by himself, his counsel or agents, and witnesses" (b).

On alteration
of bills, fresh
plans and
sections de-
posited.

It is further ordered that, where any alteration shall have been made in any work after the introduction of a bill into Parliament included in the second class of bills; plans, and sections of such alterations, on the same scale, shall be deposited with the clerks of the peace, and notices thereof published, and applications made to owners (c).

New notices
and fresh
applications.

So, plans and sections of such alterations, and a new map on the same scale as the original map, are required to be deposited in the office of the clerk of the Parliament (d).

How proved.

The service of application to owners, lessees, and occupiers of lands, may be proved before the Committee of

(a) Lords S. O. No. 220, § 6.

(b) Ib. No. 234, § 2.

(c) Ib. No. 223, § 9.

(d) Ib. No. 150.

Standing Orders in the Lords, by the evidence of the agent or solicitor, unless a petition complaining of the want of due service of such application, shall have been referred to the committee (a).

The Committee on Standing Orders in the Lords, are further to require proof that all persons, whose names are introduced in the bill, as manager, director, proprietor, or otherwise concerned in carrying the bill into effect, have subscribed their names to the petition for the bill, or to a printed copy of the bill (b).

Directors, &c.
to have sub-
scribed the
petition or bill.

“ Any petition relating to any railway or other private bill, and intended for presentation by the chairman of the committees, must have an indorsement thereon stating the name or short title of the bill to which such petition relates, and the name of the agent of the party presenting the said petition; and also stating the name or description of the party petitioning, and whether the said petition is in favour of or against the bill, and also whether the same prays to be heard by counsel or agents; and such petition must be left with Mr. Adam before three o'clock of the day on which it is intended to be presented” (c).

Petition for or
against bill
how indorsed
and deposited.

Private bills of every description are, by a Standing Order of the Lords, to be printed before the second reading, and delivered to every person concerned in interest, before the committee on the bill (d). By another Standing Order of the same year (1705), when any cause shall be appointed to be heard in the House of Lords, no private bill whatsoever, shall be read that day before the hearing of the cause.

Bills to be
printed before
second read-
ing.

On railway bills—

“ The chairman of the committees directs, that the agents, on the day on which they give notice of the second reading of a railway bill, do give in to Mr. Adam a written statement as to whether the railway is a competing line or not, and, if it be a competing line, the name or names of the railway or railways with which it competes; whether it is opposed or not, and the earliest day upon which the promoters will be ready for the committee on the bill; which statement is to be signed by the agent for the bill” (e).

Second read-
ing.

(a) Lords S. O. No. 220, § 5.

(b) *Ib.* No. 225.

(c) Notices to Parl. Agents, 2.

(d) Lords S. O. Nos. 96, 97.

(e) Notices to Parl. Agents, 4.

Previous to the second reading, the subscription contract, &c., must be delivered at the office of the clerk of the Parliament (a).

Committee.

The second reading ensues, the principle of the bill is tested, and then follows the commitment.

Unopposed bills are referred to open committees.

Unopposed private bills, are referred to open committees. These consist of "all the lords present this day;" who are presided over by the chairman of the Lords' Committees. The chairman of committees in the Lords, is assisted in his duties by a counsel attached to his office. The chairman of committees, may, in any case, report to the House, his opinion, that an unopposed bill should be treated as an opposed bill (b).

When should be treated as opposed.

Committee on opposed bill.

Every opposed bill, is ordered to be referred to a select committee of five, who are to choose their own chairman (c). The chairman of the committees, and four other lords named by the House, every session, form in effect, a Committee of Selection; and these, select and propose to the House, the names of the five lords to form the committee on each opposed bill (d).

Committee of selection.

The committee of five cannot be named to the House on the same day on which the bill is read a second time (e). The House appoint the time for the first meeting of the committee.

The attendance of the Lords is strictly enforced. By Standing Orders it is enjoined—

Attendance on committees.

"That every one of such committee of five, do attend the proceedings of the committee during the whole continuance thereof" (f).

"That the committee to whom any such opposed private bill is committed, shall meet not later than eleven o'clock every morning, and sit till four, and shall not adjourn at an earlier hour without specially reporting the cause of such adjournment to the House at its next meeting, nor adjourn over any days except Saturday and Sunday, Christmas Day and Good Friday, without leave of the House.

(a) Lords S. O. No. 224, § 6.

(b) Ib. No. 219, § 19.

(c) Ib. § 19.

(d) Ib. § 15.

(e) Ib. § 16.

(f) Ib. § 11.

“That if any member of such committee is prevented from continuing his attendance, the committee shall adjourn, and report the cause of such member absenting himself to the House at its next meeting, and shall not resume its sittings without leave of the House (a).

“That no lord who is not one of the five, do take any part in the proceedings of the committee.

“That the lords be exempted from serving on the committee on any private bill wherein they shall have any interest.

“That lords be excused from serving for any special reasons to be approved of, in each case, by the House” (b).

The committee on the bill, examine into its provisions, —add clauses,—receive amendments, and in certain cases, under special provisions, inquire into compliance with the Standing Orders; but do not examine into such as are required to be proved before the Standing Orders Committee.

Proceedings of
committee on
bills.

Before the Lords' Committee, witnesses are examined on oath, previously administered at the bar of the House.

Witnesses
sworn.

Petitioners against the bill are heard by their counsel or agents (as in the Commons) upon the preamble, or against particular clauses, or in support of new clauses. The bill, is gone through, and is reported with amendments, to the House.

Petitioners
heard.

Bill reported
with amend-
ments.

There are certain special Standing Orders, required to be complied with in the Lords; 1st, as regards all bills; 2ndly, relating to bills of a particular description.

Special
Standing
Orders.

The first class of orders relates to the payment of purchase money into the Bank, and applies to bills included in either of the three classes, whenever any sum of money is to be paid for the purchase or exchange of lands to be settled to the same uses. Provision is required to be made for the payment of the purchase-money into the Bank of England, or into one of the banks of Scotland, established by Act of Parliament or Royal Charter, or into the Bank of Ireland, in the manner, and subject to the directions, contained in the Standing Order (c). And in the case of

Payment of
purchase money
into the Bank.

(a) Lords S. O 219, § 17, 18.

(b) Ib. § 12, 13, 14.

(c) Ib. No. 228.

Inclosure and drainage bills.

commissioners under inclosure or drainage bills, express and peculiar powers are given in reference to the money so deposited, where they find a difficulty in obtaining a purchase in land of equal value (*a*).

As regards private bills or estate bills, where proof of consents is to be given before the committee, it is ordered—

Consents to be personal or affidavit of disability to attend.

“ That no notice shall be taken by the committee of the consent of any person, except trustees for a charity, to any private bill, unless such person appear before such committee, or proof be made to such committee, by two credible witnesses, that such person is not able to attend, and doth consent to the said bill.

How consent of trustees signified.

“ That the consent of all trustees for charitable purposes may be given to any private bill by which the estate, revenues, management or regulation of the charity may be affected, by each of such trustees signifying his assent to such bill by signing a printed copy of the said bill in the presence of one credible witness, who shall attest such signature” (*b*).

Letters patent.

Compliance with certain special orders, before referred to, relating to letters patent, must be proved before the committee on the bill: as, 1st, that no bill for extending the term shall be read a third time in this House, unless it shall appear that the letters patent will expire within two years, from the commencement of the session; and 2ndly, unless it shall appear that the application is made by the real inventor or his representative (*c*).

Cemetery or burial ground.

The special order of the Lords requiring a provision in every bill for a cemetery or burial ground, to restrict the company from making the same within three hundred yards of a house or plantation of 50*l.* annual value, without the consent of the owner or occupier (*d*), was noticed at an earlier period of the inquiry.

With regard to bills of the second class, except bills for turnpike roads, and railways, the committee on the bill are directed to require.

Level of roads.

Level of Roads.—“ That where the level of any road shall be altered in making any work, the ascent of any turnpike road shall not

(*a*) Lords S. O. No. 229.

(*b*) Ib Nos. 94 *a*, 94 *b*.

(*c*) Ib. No. 230.

(*d*) Ib. No. 231.

be more than one foot in thirty feet, and of any other public carriage road not more than one foot in twenty feet; and that a good and sufficient fence of four feet high, at the least, shall be made on each side of every bridge which shall be erected.

Time to be limited for the completion of the work.—"That in case the work intended to be carried into effect under the authority of the bill, shall not have been completed, so as to answer the object of such bill, within a time to be limited, all the powers and authorities thereby given shall thenceforth cease and determine, save only as to so much of such work as shall have been completed within such time, with such provisions and qualifications as the nature of the case shall require" (a).

Time limited for completing works.

The committee on a railway bill, are ordered to inquire into various matters contained under seventeen heads, and to report specially thereon; the particulars of which are nearly the same as are directed to be inquired into by the committee in the Commons, as *ex gr.* the capital of the company; the shares, &c. (b). To the inquiry into "the length of the main line and of the branches," the Commons added in 1846,—“and on what *gauge*.”—

Railway bills: Special reports.

It is ordered—

“That in those cases where there shall be no opposition, or no parties shall appear in support of a petition in opposition, to any bills for railways before this House, or where the opposition shall have been withdrawn, it shall be in the discretion of the committee to determine how far it may be necessary to inquire into the facts required to be proved by the first of the Standing Orders with regard to the proceedings of committees on railway bills” (c).

Where no opposition, in discretion of committee to omit the inquiries.

Except in the cases so provided for, where by virtue of the last mentioned order, a committee report that they have not inquired into these enumerated particulars, the House will not proceed with the further consideration of the report of any bill, until it has received from the committee, specific replies in answer to each of the various questions contained in the first order on railway bills (d).

In other cases specific replies to the questions.

(a) Lords S. O. No. 232, § 1, 2.
(b) The First Order of Railway Bills, Lords S. O. 233, § 1.

(c) Lords S. O. No. 233, § 3.
(d) Id. § 2.

Provisions to be inserted.

Particular provisions are also required to be inserted in railway bills, which it is the duty of the committee to see that they contain. 1. For limiting loans or mortgages. 2. For maintaining the levels and fences to bridges. 3. For restraining the crossing of roads on a level; which requisitions are similar, and (except that the Commons speak of any "public carriage road," where the Lords say "turnpike roads" in the second case); are the same as those of the Commons. 4. As regards the time to be limited for the completion of the work; that "the powers shall cease, unless completed within a certain time;" which is required by the Standing Order of the Lords before referred to. With regard to bills of the second class, certain clauses (*a*) are also ordered to be inserted in every railway bill. 1. For the deposit of amended plans. 2. For limiting deviations from the *datum line* in the section. 3. For restraining diminution of curves. 4. For continuance of directors in office till first general meeting of shareholders: Without which clauses contained in it, the Lords will not read the bill a third time (*b*).

Clauses to be inserted before third reading.

It is ordered,

Amended railway bills reprinted before third reading.

"That all private bills relating to railways, which shall have been opposed, and in which any amendments shall have been made in the committee, shall be reprinted as amended, previously to the third reading, unless the chairman of the committee shall certify that the reprinting of such bill is unnecessary" (*c*).

Deposit of copy of amended bill.

"That a copy of every railway bill, as amended in the committee, shall be deposited at the Board of Trade three days' before the same shall be read a third time in the House" (*d*).

PRIVATE BILLS WHICH ORIGINATE IN THE LORDS.

It only remains to notice such proceedings as are peculiar to those Bills which originate in the Lords.

Estate bills: Notice.

The only notice required in estate bills, is in the case of the estate being mortgaged.

Petition.

All parties concerned in the consequences of any private bill, shall sign the petition that desires leave to bring such bill into the House.

(*a*) Lords S. O. No. 233, § 4.
(*b*) *Ib.* § 5.

(*c*) *Ib.* No. 234, § 1.
(*d*) *Ib.* § 4.

It is ordered—

“That when a petition for a private bill shall be offered to this House, it shall be referred to two of the judges, who, after perusing the bill, without requiring any proof of the allegations therein contained, are to report to the House their opinion thereon under their hands, and whether, presuming the allegations contained in the preamble to be proved to the satisfaction of the lords spiritual and temporal in Parliament assembled, it is reasonable that such bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect, and what alterations or amendments, if any, are necessary in the same: and in the event of their approving the said bill, they are to sign the same” (a).

Petitions for estate bills are referred to two of the judges.

But this order, professedly dealing with “private bills,” is only applicable to estate bills. It is to be understood, that in the Lords, the term “private bill” is applied technically, to estate bills only: all other bills being distinguished as local and personal. Again, it should be remembered that it is only in matters of law, that the Lords have power to consult the judges; and that it is in this description of bills, that title and complicated rights and claims to property, may come in question. It is owing to this advantage, of an immediate and direct reference to the judges, that, in practice, estate bills are generally first solicited in the Lords.

ESTATE BILLS.

If the bill concern estates in England, it is referred to two of the judges of this country; if it concern lands, or heritable subjects in Scotland, it is referred to two of the judges of the Court of Session in Scotland (b), and if the petition relate to estates in land, situate in that part of the United Kingdom of Great Britain and Ireland, called Ireland, then if the parties desire it, it shall be referred to two judges of the Court of King’s Bench, Common Pleas, or Exchequer, in Ireland (c). The general instruction to the judges, of either part of the empire, is precisely the same; but the directions as to receiving consents and other particulars, slightly vary. The judges are forthwith to summon all parties before them who may be concerned in

In England.

Scotland.

Ireland.

(a) Lords S. O. No. 99.

(b) Ib. No. 131.

(c) Ib. No. 156.

the bill; and, after hearing all the parties and perusing the bill, they are to report to the House, the state of the case, and their opinion thereupon, under their hands, and to sign the bill.

Witnesses before judges.

In England the witnesses who are to be called to support the petition, must be sworn at the bar of the House of Lords, to give evidence before the judges to whom the petition stands referred (*a*); for which purpose the English judges send to the House a list of the witnesses to be sworn in relation to the bill, who are sworn accordingly. A certificate of the administration of this oath, must be obtained under the hand of the clerk of the Parliaments, and produced before the judges. The judges in Scotland and Ireland, to whom petitions respecting lands may be referred, are empowered by act of Parliament to examine witnesses on oath.

Proceedings before the judges.

The next step is to procure an appointment with the judges, and to attend with all parties concerned in the bill, and all necessary witnesses, to prove before them the allegations of the petition. And first, the signatures to the petition must be proved by the usual evidence of handwriting; then, all deeds and other documents must be produced and proved by the subscribing witnesses; all baptisms, marriages, and deaths, be shown by the production of extracts from the registers; and other facts of every kind whatsoever stated in the petition, established in a regular way by legal evidence. When this has been done, the judges, if satisfied of the facts and approving the bill, will make their report under their hands, and, as they are required by the order, sign the bill.

Report of judges.

The next point that requires attention, is the delivering a copy of the petition and the report of the judges, to the chairman of the committees; without which, it is ordered that no such bill be admitted to be read a first time (*b*). The bill and report must then be presented to the House, with a brieve for the Speaker; and upon the judges'

(*a*) 41 Geo. 3, c. 105.

(*b*) Lords S. O. No. 175.

report being read, if that favour and approve the measure, leave will be given to bring in the bill.

When an estate bill has begun at the Commons, it is read a first time in the House of Lords the same day it is brought up from the Commons, and then immediately referred to the judges for their opinion, and the transcript of the bill is transmitted to the judges with the order of reference.

When begun
at the Com-
mons.

The witnesses being sworn at the bar of the House, the judges receive and consider the evidence, and make their report to the House. In this case, where not the petition for a bill, but the bill itself, already framed and concocted, is submitted to their judgment, if they do not approve its general principle, or if they dislike any of its specific provisions, it is usual for them to make a special report to the House of their objections. Where the report is general and favourable, the judges state “ that they have perused the “ bill which they conceive to be proper for the purposes “ intended, and are of opinion that it may be reasonable that “ the same should pass into a law, if their Lordships shall so “ please ;” but they do not sign the bill.

An order is made at the commencement of every session, that no petition for a private bill shall be received after a certain day, nor any report from the judges thereon, after another day more distant. And all further proceedings upon such bills, are suspended, until the report of the judges shall have been received. Indulgence, however, is often extended, and on a petition presented, with sufficient cause shewn, the judges’ report may be received, though the time appointed for receiving judges’ reports should have elapsed.

Persons concerned in the consequences of private bills relating to Scotland and Ireland, and there residing, may give their consent to the passing of such bills, in Scotland, before two of the judges of the Court of Session ; in Ireland, before the two judges to whom the same shall be referred ; and the certificates respectively of the said judges, that such several persons did appear personally before them and give their consents, and in their presence sign a bill, (which bill

Consents to
Scotch and
Irish estate
bills.

together with the said certificates must be produced); shall be held sufficient evidence of the consent of such persons. And it is a general instruction to such judges, both of Scotland and Ireland, that they take no notice of the consent of any persons to the passing of such bill, unless such person appear before them, or it be made manifest to them by an instrument under the hand of a notary public, that he or she, is not able to attend, and doth consent to the said bill (*a*).

Consents of
heirs of entail
in Scotland.

So, it is directed, that the judges who meet to take the consent of heirs of entail, concerned in the consequences of private bills relating to estates in that part of Great Britain called Scotland, are to take no notice of the consent of any person to the passing of such bill, unless such person appear before them, or it be made manifest to them by an instrument under the hand of a notary public, duly executed according to the forms required by the law of Scotland, that he or she is not able to attend, and doth consent to the said bill (*b*).

Proportion of
consents
sufficient in
Scotland.

Another standing order of the Lords directs, that it shall be sufficient to have the consent of the persons concerned in the consequences of private bills regarding estates in land, or heritable estates in Scotland, in certain proportions therein furnished and prescribed (*c*).

Consents to
estate bills
generally.

On the subject of consents, which, in bills of this nature, is exceedingly material, there are several orders in force affecting estate bills generally.

Where peti-
tioners tenant
for life, and
tenant in tail.

It has been before adverted to, that where a petitioner for a private bill, is tenant for life in possession, and another petitioner for the same bill, is tenant in tail in remainder, and of age; and where it is competent for the two together, by deed, fine and common recovery, to bar the rights and interests of all persons in remainder after the estate tail, the committee need not take the consent of the persons in remainder after the estate tail.

Where women
have an
interest.

But in certain cases, very great caution is most properly exercised. Thus, it is provided, that when any married or

(*a*) Lords S. O. No. 122.

(*b*) Ib. No. 133.

(*c*) Ib. No. 197.

unmarried woman, or when any widow desires to consent to the sale or exchange of any estate, in which she may have an interest, or upon which she may be entitled to a jointure or rent-charge of any sort, or if she shall desire to sell, or otherwise dispose of all or any part of such jointure, rent-charge or interest, the committee shall require not only her own consent in person, but also that of her trustee or trustees (*a*).

Where women have an interest.

So when any estate is proposed to be sold or exchanged, on which the whole or any part of the fortune of any child or children is secured, or in which any such child or children hath or have an interest, the committee shall take the consent of any such child or children, if he, she, or they, is or are under age, by his, her, or their parents or guardians, and if of age, then the consent of the trustee or trustees, for such child or children, shall also be taken, as well as the personal consent of such party (*b*).

Where children have an interest.

And again, the consent of all trustees shall be required in person before the committee, where any money is to pass through the hands of any such trustees, whether for jointure, pin-money, the fortunes of younger children, or any other interest whatsoever (*c*); but the consent of trustees to preserve contingent remainders only, shall not be necessary.

Trustees to consent in person.

So, when any of the parties interested in any private bill, shall have power to name a new trustee, in the room of any trustee dying, &c., the appointment shall be with the approbation of the Court of Chancery (*d*).

New trustees appointed with approbation of Court of Chancery.

The provisions of an estate bill, are in great measure regulated by certain Standing Orders of the House of Lords.

Provisions of bill.

It is ordered—

“That where a bill is brought in to empower any person to sell or dispose of lands in one place, and to buy or settle lands in another place, the committee to whom such bill shall be referred do take care that the values be fully made out; and if the bill shall not be for making a new purchase, but only for settling other lands in lieu of those to be sold, in that case provision shall be made in the bill that such other

(*a*) Lords S. O. No. 146.

(*b*) Ib. No. 147.

(*c*) Ib. No. 148.

(*d*) Ib. No. 149.

lands be settled accordingly ; but if the bill shall be, to purchase and settle other lands, in that case the committee are to take care that there be a binding agreement produced for such new purchase ; or if it shall be made appear to the committee that such agreement cannot then be made, or that such purchase cannot then be made and settled, as desired by the bill, and the committee shall be satisfied with the reasons alleged for either of those purposes, in either of those cases provision shall be made in the bill, that so much of the money arising by sale of the lands directed to be sold as is to be laid out in a new purchase, shall be paid by the purchaser or purchasers into the Bank of *England*, in the name and with the privity of the Accountant General of the High Court of Chancery, to be placed to his account there *ex parte* the purchaser or purchasers of the estate of the person or persons mentioned in the title of the said bill, pursuant to the method prescribed by the act of the twelfth year of King *George* 1, cap. 32, and the general orders of the said Court, and without fee or reward, according to the act of the twelfth year of King *George* 2, cap. 24, and shall, when so paid in, be laid out in the purchase of navy or victualling bills, or exchequer bills : and it is further ordered, that the interest arising from the money so laid out in the said navy or victualling bills, or exchequer bills, and the money received for the same, as they shall be respectively paid off by government, shall be laid out in the name of the said Accountant General, in the purchase of other navy or victualling bills, or exchequer bills ; all which said navy and victualling bills, and exchequer bills, shall be deposited in the Bank in the name of the said Accountant General, and shall there remain until a proper purchase or purchases be found and approved, as shall be directed by such bill, and until the same shall, upon a petition setting forth such approbation, to be preferred to the Court of Chancery in a summary way by the persons to be named in the bill, be ordered to be sold by the said Accountant General for the completing such purchase, in such manner as the said Court shall think just and direct : and it is further ordered, that if the money arising by the sale of such navy, victualling or exchequer bills, shall exceed the amount of the original purchase money, so laid out as aforesaid, then, and in that case only, the surplus which shall remain, after discharging the expense of the applications to the Court, shall be paid to such person or persons respectively as would have been entitled to receive the rents and profits of the lands directed to be purchased, in case the same had been purchased pursuant to the act, or to the representatives of such person or persons" (a).

It will not have escaped the reader's attention, that in

(a) Lords S. O. No. 126.

the earlier part of the Order last referred to, it was a positive instruction given to the committee to take care, that on all the occasions to which it applied, "the values were fully "made out." With precisely the same object, it is directed by another Standing Order, "that in any private bill for "exchanging an estate in settlement (a), and substituting "another estate in lieu thereof, there shall be annexed to "such bill a schedule or schedules of such respective "estates, showing the annual rent and the annual value "thereof, and also the value of the timber growing there- "upon:" and in all private bills for selling a settled estate, and purchasing another estate to be settled to the same uses, there shall be annexed to such bill "a schedule or "schedules of such estates, specifying the annual rent there- "of; and every such schedule shall be signed and proved "upon oath, by a surveyor or other competent person "before the committee on the bill."

Schedules of the value annexed to bills for exchanging estates.

Concerning bills for selling lands and purchasing others, in Scotland and in Ireland respectively, orders are made requiring the committees to take care that the values be fully made out, and directing in the several cases (*mutatis mutandis*), the securities to be taken for the fulfilment of the agreements, which will be found in the Standing Orders (b).

For exchange of lands in Scotland and Ireland.

Divorce bills must have their commencement in the Lords, and in the following manner:—

DIVORCE BILLS.

A petition is presented to the House signed by the party applying for the divorce. With the petition is delivered upon oath, at the bar of the House, an official copy of the proceedings, and of a definitive sentence of divorce *a mensa et thoro* in the Ecclesiastical Court (c).

The allegations of the petition will of course depend upon the circumstances of the case.

When leave is given to bring in the bill, it may be presented and read a first time, and ordered to be read a second time the next day fortnight. And Orders may be

(a) Lords S. O. No. 151.

(c) Ib. No. 141.

(b) Ib. No. 153.

made for certain witnesses to attend the House on the reading.

Clause prohibiting offending parties from marrying.

As to the provisions of the bill, a celebrated Order of the Lords (*a*) requires the insertion of a clause which has occasioned much difference of opinion, and instances are rare, in which such obnoxious clause has not been expunged before the bill was sent to the other House, or there; indeed, it is seldom that it is eventually retained in the bill. The substance of the order is as follows:—"That
 "no bill to dissolve a marriage for the cause of adultery,
 "and to enable the petitioner to marry again, be received
 "by that House without a clause prohibiting the offending
 "parties from intermarrying," &c.

It is ordered,

Report of trial at *Nisi Prius*, or on writ of inquiry, before second reading.

"That when any petition for any bill of divorce shall have been presented to this House, in any case in which any trial at *Nisi Prius* shall have been had, or any writ of inquiry executed within the United Kingdom, wherein the petitioner shall have been party, the judge or under-sheriff before whom such trial shall have been had, or such writ of inquiry executed, do transmit to the clerk-assistant, to be laid upon the table of this House, a report of the proceedings upon such trial or writ of inquiry; and that no such bill of divorce be read a second time until such report shall have been so laid upon the table of this House (*b*).

Petitioner to attend on second reading, as to collusion.

"That for the future, upon the second reading of any bill of divorce, the petitioner praying for the same do attend this House, in order to his being examined at the bar, if the House shall think fit, whether there has or has not been any collusion, directly or indirectly, on his part, relative to any act of adultery that may have been committed by his wife, or whether there be any collusion directly or indirectly, between him and his wife, or any other person or persons, touching the said bill of divorce, or touching any proceedings or sentence of divorce had in the Ecclesiastical Court at his suit, or touching any action at law which may have been brought by such petitioner against any person for criminal conversation with the petitioner's wife; and also whether, at the time of the adultery of which such petitioner complains, his wife was, by deed, or otherwise by his consent, living separate and apart from him, and released by him, as far as in him lies, from her conjugal duty, or whether she was at the time of such adultery cohabiting with him, and under the protection and authority of him as her husband (*c*).

(*a*) Lords S. O. No. 176. (*b*) *Ib.* No. 214. (*c*) *Ib.* No. 142.

When a petition has been presented by the attorney of a person abroad, and the usual order made for the attendance of the petitioner on the second reading, it will be necessary to present a petition, stating that the party suing for the divorce is resident abroad, and praying that his attendance may be dispensed with.

Excuse petitioner when cannot attend.

In the case of Naturalization bills, it is ordered,

“That no bill for naturalizing any person born in any foreign territory, shall be read a second time until the petitioner shall produce a certificate from one of his Majesty’s principal secretaries of state respecting his conduct (a).

Naturalization bills not read a second time without certificate.

No person of the age of eighteen years or upwards, can be naturalized or restored in blood, unless he have received the Sacrament of the Lord’s Supper, *within one month* before the bringing in of the bill; and unless he take the oath of supremacy and allegiance in the presence of Parliament; and the Lord Chancellor, if the bill begins in the Upper House, and the Speaker of the House of Commons, if the bill begins *there*, have authority during the session, to administer such oaths. If then the party seeking to be naturalized, be eighteen years of age, he receives the Sacrament shortly before the bill is presented. If he be not eighteen, but a minor, a petition is presented by his father or guardian, who appears for him before the committee

These bills cannot be received in either House of Parliament, unless they contain certain disabling clauses; as by the 1 Geo. 1, c. 4, unless there be a clause to declare that such person shall not be enabled to be of the privy council, or a member of either House of Parliament, or enjoy any office of trust, or have any grant from the Crown. So there must be inserted a clause, disabling the person from obtaining thereby, in any foreign country, any immunity or indulgences in trade, enjoyed by natural born British subjects, unless he shall have resided in Great Britain for seven years next before the commencement of

Disabling clauses.

(a) Lords S. O. No. 171.

the session in which he is naturalized, and shall not have been absent from the same, longer than two months at one time, during the said seven years.

It is ordered,

BILLS FOR
REGULATION
OF TRADE.

“ That for the future, no bill regulating the conduct of any trade ; altering the laws of apprenticeship in relation to any particular business ; affixing marks to designate the quality of any manufacture ; prohibiting the manufacture of any species of commodity ; or extending the term of any patent ;—shall be read a second time in this House until a select committee shall have inquired into the expediency or inexpediency of the proposed regulations, and shall have reported upon the expediency or inexpediency of this House proceeding to take the bill into further consideration (a).

It is ordered,

Respecting
Joint Stock
Companies.

“ That in future, with the exception of bills for making or improving any turnpike road, navigation, aqueduct, cut or canal, tunnel or archway, bridge, ferry, dock, pier, port, or harbour, wharf, stairs, or landing place, and of bills for lighting, paving, or watching any one town, parish, or district, or for therein erecting or improving any market place or market house, or for the cultivation and improvement of waste lands, or for establishing any cemetery, all bills brought into this House enacting and declaring that certain persons shall form a body politic and corporate, who shall only be bound to the extent of their respective shares, or granting to the same the privilege of a perpetual succession and a common seal, or the right of suing and being sued, pleaded and being impleaded, at law or in equity, or of prosecuting any person who shall commit any felony, misdemeanor, or other offence ; or any bill conveying to any number of persons, who are not bound conjointly and severally to the extent of their respective fortunes, one or more of the aforesaid privileges ; such bill, after being read a first time, shall be referred to a select committee ; and that no such bill shall be read a second time till the committee to which it is referred have reported that it has been proved to them in a satisfactory manner, that three-fourths of the capital intended to form the joint stock of such company, is deposited in the Bank of *England*, or vested in Exchequer bills, or in the public funds, in the name of trustees, to be transferred to such company when they are by law constituted a body politic and corporate, or have by law acquired any of the aforesaid privileges.

“ That in future, when any bill shall be brought into this House granting and enacting, in favour of any body politic and corporate, previously constituted such by royal charter, and who are not bound conjointly and severally to the extent of their respective fortunes, further privileges, such bill, if not intended to effect the objects specially excepted in the former motion, after being read a first time, shall be referred to a select committee; and that no such bill shall be read a second time till the committee to which it is referred have reported that it has to them been proved in a satisfactory manner, that three-fourths of the capital intended to form the joint stock of such company has been paid up by the individual proprietors (a).

The proceedings may now be considered, and the bills traced, through their several stages.

The clerk assistant directs that eight copies of every local, and personal, and private bill originating in the House of Lords (if printed), shall be delivered at the office of the clerk attending the table of the House upon the first reading of the bill (b).

Notices to
Parliamentary
agents to de-
liver copies of
private bills.
First reading.

No interval is appointed to take place between the first and second readings. It is not usual for petitions to be presented, praying to be heard against any private bills on the second reading, except divorce and peerage bills; and in those cases, whether there be opposing petitions or not, counsel are heard and witnesses examined on the second reading (c).

When a divorce bill is appointed to be read a second time on a future day, the usual orders will be made, and may be procured with an office copy of the bill, from the Parliament office. Copies of the orders, as well as a copy of the bill examined with the House copy, must be served on the party against whom the divorce is sued for. The usual orders are, “ That notice be affixed on the doors of “ the House of Lords; that the Lords be summoned; that “ the party applying for the divorce be heard by his “ counsel on the second reading, to support the allegations

(a) Lords S. O. Nos. 210, 211. Agents, No. 1.

(b) Notices to Parliamentary (c) May, 452.

“ of the bill; that, together with the examined copy of the
 “ bill before mentioned, notice be given of the second
 “ reading to the party against whom the divorce is sued,
 “ and that he or she may be at liberty to be heard by
 “ counsel against the bill.”

Where the party cannot be found, or is in a distant part of the world, service will be allowed upon his or her agent, upon a petition from the agent of the promoter of the bill, stating the facts and proofs thereof on oath, at the bar of the House.

Second reading.

On the day appointed for the second reading, after proving the service of the office copy and orders upon the party or his agent, as the case may be, the bill will be read a second time, and counsel heard in support of it, and witnesses called to prove the state of the family, the act of adultery, and other allegations in the preamble of the bill. The marriage must be proved by the production of a copy of the register, with satisfactory evidence of the identity of the parties. If solemnized abroad, it must be shown by persons acquainted with the law and custom of the place, to have been performed with the rights and ceremonies necessary to make it a good and valid marriage according to the law of the place.

The Lords require evidence of the fact of adultery, at the bar of their own House, in addition to the proceedings at *Nisi Prius*, and before the Ecclesiastical Courts. The only exception to this rule of practice is, where depositions taken before the judges of India are admitted in evidence, under the act 1 Geo. 4, c. 101.

Commitment.

Estate, naturalization, name, and other ordinary private bills, are referred to an open committee, who inquire whether the Standing Orders have been complied with, and see that the proper provisions are contained in the bill.

It is ordered as to estate bills;—

“ That no committee shall sit upon any private bill until ten days after it shall have been read a second time (a).

(a) Lords S. O. No. 94.

It is further ordered,

“ That the Lord who shall be in the chair of a committee to whom any private bill shall be committed, shall state to the House, when the report of such committee is made, how far the Orders of the House in relation to such private bill have or have not, been duly complied with.

“ Ordered, that these Orders shall be transmitted to the committee to whom any private bill shall be referred, for their guidance and instruction (a).

Divorce bills are committed to a committee of the whole House.

Divorce bills to committee of whole House.

All bills are reported, with or without amendments ; bills originating in the Lords are ordered to be ingrossed ; Commons bills being already ingrossed, await the third reading.

Report of bills.

The third reading, and passing, is the final stage of all bills, public and private.

Third reading and passing.

The bills sent down to the Commons, pass through the same stages as other private bills, and are subject to the same rules, (only not requiring ingrossment), and except that name bills need not be printed (b), and that no breviates are prepared of divorce, name, or estate bills, unless they relate to Crown, church, or corporation property, or property held in trust for public or charitable purposes (c).

Lords bills in the Commons subject to same rules as other private bills.

There is one exception from these rules in the manner of proceeding with divorce bills.

Exception in cases of divorce bills.

It is ordered by the Commons,

“ That a committee be nominated at the commencement of every session, consisting of not more than fifteen members, of whom five shall be a quorum ; and such committee shall be denominated ‘ The Select Committee on Divorce Bills ’ ” (d).

Select committee on divorce bills.

To this committee all divorce bills are committed after the

(a) Lords S. O. No. 152.
(b) Com. S. O. No. 109.

(c) Ib. No. 123.
(d) Ib. No. 7.

second reading. An instruction is given to the committee, — “that they do hear counsel, and examine witnesses for the bill; and also, that they do hear counsel and examine witnesses against the bill, if the parties concerned, think fit to be heard by counsel, or to produce witnesses.” At the same time a message is sent to the Lords, to request their Lordships to communicate a copy of the evidence taken before them upon the bill, or for the depositions transmitted from India. When these are communicated, they are referred to the committee on the bill (*a*).

It is the prescribed duty of the select committee on divorce bills,

What evidence on divorce bills.

“To require evidence to be given before them that an action for damages has been brought in one of her Majesty’s Courts of Record at Westminster, or in one of her Majesty’s Courts of Record in Dublin, or in one of her Majesty’s Supreme Courts of Judicature of the presidencies of Calcutta, Madras, Bombay, or the Island of Ceylon, respectively, against the persons supposed to have been guilty of adultery, and judgment for the plaintiff had thereupon; or sufficient cause to be shown to the satisfaction of the said committee why such action was not brought, or such judgment was not obtained” (*b*).

It is also ordered—

Petitioner to attend the committee.

“That select committee on divorce bills, shall, in all cases in which the petitioner for the bill has attended the House of Lords upon the second reading of the bill, require him to attend before them, to answer any questions they may think fit that he should answer.

Committee to report in all cases.

“That the select committee on divorce bills shall report every such bill to the House, whether such committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them” (*c*).

Proceedings before committee.

The party opposing a divorce bill, may appear before the committee without presenting a petition to the House against the bill; and the promoter of the bill must serve him or her, with the orders of the House, and a copy of

(*a*) May, 405.

(*b*) Com. S. O. No. 109.

(*c*) *Ib.* Nos. 110, 111.

the bill; or show on petition, that such service cannot be effected; and pray that service on the agent, may be good service. On the appearance of the agent, and his consent to accept the service of the orders, and a copy of the bill, the House make the necessary order. In compliance with the instruction and Standing Orders of the House, the committee make the necessary inquiries, and report:—

“ That they have examined the allegations of the bill, as to the marriage of the parties, the adultery charged as the ground for dissolving the marriage,—the verdict at law,—and the sentence of divorce in the Ecclesiastical Court; and upon evidence satisfactory to the committee, found the same and other allegations to be true” (a).

Report.

Lords' bills are subject to the same intervals and require the same notices, in strictness, in their passage through the Commons, as other private bills; but it is observed, in practice, that such bills, if received at the close of a session, receive more indulgence than is ordinarily shown; which is manifested in dispensing with the orders of the House, and in permitting them to pass with less obstruction and delay.

Passage of
Lords' bills.

It is here proper to notice, that the neglect or non-observance of any of the rules and orders referred to, applicable to the different sorts of private bills; or, the inattention to any of the forms of the House, in either assembly, will not vitiate or affect a bill when passed: It may obstruct and retard the passage of the bill, but it cannot invalidate an act of Parliament.

Neglect of
Standing
Orders, and of
forms of the
House, not
affect the bill
when passed.

It remains to close this branch of the inquiry, with a few observations on the principal points to be attended to, in the preparing and settling of private bills.

Of preparing
and settling
bills.

It is a general rule, applicable to all bills, that the allegations in the preamble should correspond with the statements in the petition. It is another, that no provision be inserted in the bill, which is not warranted by the petition.

The Parliamentary agent prepares the House copy from

the rough draft transmitted to him by the solicitor. The agent is further required to attend to what is necessary to be done in filling up the blanks, both in the copy for the House and in that which he sends to press, and he is expected to take care that both are ready by a stated day.

The truly important and essential point is a close compliance with the Standing Orders, in having the proper clauses applicable to each particular class of private bills introduced therein.

Consolidation
acts.

The General Inclosure Act, and the General Turnpike Act, have contributed much to introduce a greater degree of simplicity and uniformity into private bills connected with the subject to which they respectively relate, and materially to lessen the expenses. Inclosure bills are now in their provisions, in all instances nearly the same, under the statute 41 Geo. 3, c. 109 (*a*), by which the ordinary regulations which were before that time usually introduced into old inclosure acts, were first incorporated into and made essential parts of every inclosure bill. So the provisions usually inserted in all road bills, were revised and consolidated on the occasion of the passing of the 3 Geo. 4, c. 126, s. 151, the General Turnpike Act, which has been subsequently amended by the 4 Geo. 4, c. 95, the 7 & 8 Geo. 4, c. 24, and the 9 Geo. 4, c. 77, s. 9; the last of which acts provides that all the powers, authorities, clauses, provisions, penalties, matters and things contained in these several acts, and in that act, shall extend to every local turnpike act, and shall be applied and put in execution as fully and effectually as if the same were re-enacted in the body of such local turnpike act, and made part thereof. And that such general acts shall not be recited in such local acts, except for the purpose of being varied, &c.

The term for which private turnpike acts are granted, is now extended to thirty-one years.

Statutes 8 Vict. c. 16 (*b*), relating to acts for incorporating

(*a*) And see 1 & 2 Geo. 4, c. 23, on the subject of inclosures.

(*b*) "The Companies Clauses Consolidation Act, 1845." Ditto (Scotland) 8 Vict. c. 17.

companies for carrying on undertakings of a public nature, 8 Vict. c. 18 (*a*), relating to acts authorizing the taking of lands for undertakings of a public nature; and (*b*) 8 Vict. c. 20, relating to acts authorizing the making of railways, contain various provisions which were usually inserted in those acts to which they respectively relate, and enacts, that those provisions shall, so far as they are applicable, form part of, and be construed with such acts subsequently to be passed, save as the same shall be varied or excepted by such subsequent acts. Consolidation acts.

Estate bills are to be considered as private conveyances, differing only in the circumstance, that the title does not wholly depend on the ownership of the parties, and the nature and extent of their interest, but frequently on the operation of the words of the act qualified and restrained by provisos and exceptions introduced therein. Estate bills.

It is regarded as a principal object in inclosure bills, acts for partition, exchange, &c., to make the lands received upon allotment subject to the same estates and uses, as the lands in respect of which the allotment, exchange, or partition, were made. And there is usually a clause, that allotted lands shall be of the same tenure, as lands in respect of which the allotment, exchange or partition is made. If this clause be omitted, the allotted lands will be freeholds.

But there is this difference observed between exchanges under inclosure acts, and exchanges which take place under acts for that special purpose. The construction of inclosure acts communicates to the lands received in exchange or allotment, the title which governed the lands or common rights given in exchange. Hence the exchange is absolute; while under a mere private act of exchange between individuals, each holds the lands under the title which attached to those lands prior to the exchange, and

(*a*) "The Land Clauses Consolidation Act, 1845." Ditto (Scotland) 8 Vict. c. 19.

(*b*) "The Railway Clauses Consolidation Act, 1845." Ditto (Scotland) 8 Vict. c. 33.

the eviction clause is generally framed in the same manner as if the exchange were made by mutual grants between the parties.

Proper clauses. A general saving is now always added at the close of every private act, of the rights and interests of all persons whomsoever, except those whose consent is given or purchased and all persons claiming under them, and who are therein particularly named, "saving always to the King's most excellent Majesty, his heirs and successors, and to all and every other person and persons, bodies politic, corporate, and collegiate, his, her, and their heirs, successors, executors, and administrators, all such estate, right, title, and interest, (other than such as are expressly barred, or meant and intended to be barred, by this act), as they, every or any of them, had and enjoyed of, in, to, or in respect of, the said lands and grounds hereby directed to be divided and allotted previous to the passing of this act, or could, or might have had or enjoyed, in case the same had not been made." But before this general practice of inserting such saving clause in every private act came to be adopted, it was yet (*a*) always held, agreeably to reason and natural justice, that a private act did not bind strangers.

Where there is a probability that there will be occasion to give the act frequently in evidence in a Court of Justice, it is advisable to insert a clause in the bill enacting that "the act shall be printed by the King's printers, duly authorized to print the statutes of the United Kingdom, and that a copy of it so printed, shall be admitted as evidence by all judges, justices, and others."

So, in cases where it is expedient to subject persons to indictment for any offence committed against the provisions of a particular law, a clause must be added, declaring the act to be public; as no person can be indicted for an offence committed against the provisions of a private act of Parliament. And a bill to amend, alter, or repeal an act, con-

(*a*) The leading case was *Barrington's case*, 8 Rep. 136; and see 1 Vent. 176.

taining a clause declaring the act to be public, should contain a clause declaring the amended act also to be a public act, in these terms: "And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

As regards private bills, there are certain well-considered clauses, known as "model clauses" relating to bills of particular descriptions, which, if not included in the original bill, are inserted by the committee, unless sufficient cause be shown for their omission. Model clauses.

It remains to state succinctly, the agency by which the general conduct of private business in the House of Commons is effected. The rules defining the duties and responsibilities of Parliamentary agents laid down by the Speaker, by the authority of the House, in 1837, are contained in a Parliamentary paper of that date (a).

They are to the following effect:—

1. "Every agent conducting proceedings in Parliament before the House of Commons, shall be personally responsible to the House and to the Speaker for the observance of the rules, orders, and practice of Parliament, and rules prescribed by the Speaker, and also for the payment of all fees and charges. To be personally responsible for observance of rules of the House.

2. "No person shall be allowed to act as an agent until he has subscribed a declaration before one of the clerks in the Private Bill Office, engaging to observe and obey all the rules of the House, and to pay all fees and charges when demanded. He shall also enter into a recognizance (if hereafter required) in £500, conditioned to observe this declaration. He shall then be registered in a book to be kept in the Private Bill Office, and shall be entitled to act as a Parliamentary agent, without the payment of any fee upon the declaration, bond, or registry. Declaration of registry.

3. "The declaration, &c., shall be in such form as the Speaker may from time to time direct. Form.

4. "No notice shall be received in the Private Bill Office, for any proceeding upon a petition for a bill, or upon a bill brought from the Lords, (after such bill has been read a first time) until an appearance to act as the Parliamentary agent upon the same shall have been Appearance to be entered upon bills.

(a) Parl. Paper, No. 88, of 1837.

entered in the Private Bill Office ; in which appearance, shall also be specified the name of the solicitor (if any) for such petition or bill.

Appearance on
petitions
against bills.

5. " That before any party shall be allowed to appear or be heard upon any petition against a bill, an appearance to act as the agent for or upon the same, shall be entered in the Private Bill Office ; in which appearance shall also be specified the names of the solicitor and of the counsel who appear in support of any such petition, (if any be there engaged), and a certificate of such appearance shall be delivered to the Parliamentary agent, to be produced to the committee clerk.

A fresh appear-
ance on change
of agent.

6. " In case the agent for any petition or bill shall be displaced by the solicitor, or shall decline to act, his responsibility shall cease upon a notice being given in the Private Bill Office ; and a fresh appearance shall be entered upon such petition or bill.

Speaker may
prohibit an
agent from
practising.

7. " Any agent who shall wilfully act in violation of the rules and practice of Parliament, or any rules to be prescribed by the Speaker, or who shall wilfully misconduct himself in prosecuting any proceedings before Parliament, shall be liable to an absolute or temporary prohibition to practise as a Parliamentary agent, at the pleasure of the Speaker ; provided that upon the application of such agent, the Speaker shall state in writing the grounds for such prohibition."

By the Orders regulating the practice of the Private Bill Office, it is provided :—

" That the clerks of that office shall enter the name,
" description, and place of residence of the Parliamentary
" agent in town, and of the agent in the country (if any),
" soliciting a bill ; the register to be open to public inspec-
" tion daily, between the hours of ten and six."

Members may
not be agents.

It was declared by a resolution of the House, 26th February, 1830, *nem. con.*,

" That it is contrary to the law and usage of Parliament,
" that any member of this House should be permitted to
" engage, either by himself or any partner, in the manage-
" ment of private bills, before this or the other Houses of
" Parliament, for pecuniary reward."

Nor officers of
the House.

So, it was established, in compliance with the recommendation of a select committee on House of Commons Offices, in 1835, that no officer or clerk belonging to the establishment, shall be allowed to transact private business before the House, for his emolument or advantage, either directly or indirectly.

All notices in relation to private bills are required to be delivered at the Private Bill Office, at specified times, by the agents soliciting the bills. By a Standing Order it is directed—

Duties of agents.
Notices of private business.

“ That all notices required to be given in the Private Bill Office be delivered in the said office before six of the clock in the evening of any day on which the House shall sit, and before two of the clock on any day on which the House shall not sit; and that after any day on which the House shall have adjourned beyond the following day, no notice shall be given for the first day on which it shall again sit (a).

Time for delivering notices.

All notices are open to inspection in the Private Bill Office; they are also printed in the votes.

Published :

Every form and proceeding out of the House in conducting a bill, is managed by a Parliamentary agent or by officers of the House. Members who at the request of their constituents, have undertaken the charge of a bill in the House, receive notice from the agents when they will be required to make particular motions. There is a “private business list” on the table of the House every afternoon, a quarter of an hour before the time appointed for Mr. Speaker to take the chair: upon which members have their names entered, if they have charge of any private petition or bill; and their names will be called by Mr. Speaker, in the order in which they appear in the list. But private petitions are often received late at night.

Management of business out of the House by agents.

Time for private business.

The fees payable by the parties promoting or opposing private bills, or soliciting the introduction of special clauses for their particular benefit, have been settled in both Houses, and are perfectly familiar and well known.

FEES payable on private bills.

There are officers in both Houses whose special duty it is, to take care that the fees are properly paid by the agents, who are responsible for them. In the House of Commons the fees are carried to a fee fund, out of which the salaries and expenses of the establishment are in part

How collected and applied.

defrayed; and in the Lords, a portion of the fees is appropriated in the same manner, to a general fee fund.

In the House of Lords the fees were established by a table in the year 1725, and revised and approved in the year 1824. A valuable report of a select committee of the House of Lords upon the fees and charges payable upon private bills, was ordered to be printed on the 12th of June, 1827. From such report it appears, that the fees incurred by parties to private bills in the House of Lords, although the rate of fees is in some respects higher, are greatly less in the total amount, than the fees paid upon the same bills in the House of Commons. This is owing in part to the circumstance, that any opposition made to such bills usually takes place whilst the bill is in the House of Commons, and in part also to the fees in that House for ingrossing the bill. The method, say the Lords' committee, of charging fees upon the ingrossment of bills, at the same rate *per press*, whether the number of folios contained in each press be many or few, has led to much unnecessary expense and great inconvenience; the ingrossing clerks writing in a large, loose, and irregular hand, so as to increase the number of presses and their amount of profits, and bills being rendered unnecessarily cumbrous, and filling the repositories of these records in a manner highly inconvenient to the public.

Charges of
Parliamentary
agents.

The rate of charge by the several Parliamentary agents, for the services which they render to their employers, is not regulated by any known or uniform standard, but varies with different agents, which occasioned the select committee of the Lords to recommend to that House, that there should be established, by law, a power to audit and tax the charges of all Parliamentary agents, when required by the parties concerned. This was effected by the Statute 7 & 8 Geo. 4, c. 64, "An Act to establish a taxation of costs on Private Bills in the House of Lords."

The Statute 6 Geo. 4, c. 123,* was enacted for similar

* An act "to establish a taxation of costs on private bills in the

purposes with respect to the House of Commons. This measure in both Houses, was rendered the more necessary, as the rate of charges seems to have increased considerably of late years; which the Lords' committee say is attributable in part, to the nature of the Standing Orders, and the ambiguous manner in which some of them are expressed, and which has given a greater scope for opposition. Some of the charges too, frequently made by Parliamentary agents, it was admitted on the evidence before the select committee of the Lords, were for services which were not actually performed: other charges were represented to exceed very far the value of the services rendered, more especially as the agent appears to be entitled, by long usage, to a considerable solicitation fee; which is of course still larger when any opposition to a bill creates more trouble, and a more protracted attendance.

By 7 & 8 Geo. 4, c. 64, taken in conjunction with 6 Geo. 4, c. 123, an advance was made towards the establishment of a regular system, upon fixed principles, for taxing the costs and expenses of Parliamentary agents and others in soliciting private bills in both Houses. In the House of Commons, if the suitors for a bill complain of the costs charged by the agent or solicitor; or if the latter complain of non-payment of costs, the Speaker has power by the Commons' Act, to appoint, and, in fact, has appointed, persons to tax the costs, and to receive fees for such taxation. On their report, the Speaker gives a certificate expressing the amount allowed, which "shall be conclusive evidence of all demands therein certified." If parties refuse to pay the amount certified, the Speaker's certificate has the force of a warrant to confess judgment, and the Court in which an action may be commenced, is required to order judgment to be entered up accordingly.

In the Lords, if petitioners for or against a private bill,

"House of Commons, and to prohibit the sale of certain offices under the serjeant-at-arms attending the House of Commons." "Whereas it is expedient to establish a taxation of the costs and expenses charged by Parliamentary agents, solicitors and others, &c."

or their agents (and not as in the Commons, the promoters of the bill only), apply to the clerk or clerk assistant of the Parliaments, complaining of the costs, charges and expenses, charged by a Parliamentary agent, or, if the latter complain of the non-payment of his costs, the clerk is required to appoint persons to tax the costs, so far as they relate to the House of Lords. The payment of the amount certified, is enforced in like manner as in the Commons.

By section 3, it is usefully enacted, that the persons appointed to tax shall have power to administer oaths, and to require the production of vouchers for all payments charged. By section 4, the clerk of the Parliaments is to prepare a list of the charges allowed to Parliamentary agents.

These statutory provisions are obviously defective. The High Court of Parliament should have its own Masters, appointed and qualified to tax all costs and charges of private bills, both of solicitors and agents, in town and in country, in whatever manner incurred,—in befriending or resisting a measure,—from the first conception and concoction of the scheme, to its full consummation after its passage through both Houses of Parliament. Then would the extravagant expenses of promoting, or of opposing private bills, soon be reduced; when, whether bills had been contested to the end, or compromised, one uniform scale of taxation, founded on principle and reduced to system, became established for the adjudication and settlement of all Parliamentary bills, effectuated or only projected.

As the existing remedies are, at present, partial and inadequate, one-sided in the Commons, and limited in both Houses; so is the suggested remedy, in the report of the committee of the House of Commons on private bills, wanting in boldness, comprehensiveness and completeness; inasmuch, as it does not embrace both Houses, and recommend a communication with the other House to procure the appointment of Masters or taxing officers for the two. Why should there not be Masters and Examiners, for the Parliament?

The select committee of the House of Commons on

private bills, in their report made in 1846, remark, that
“ Under the present system, the expense of obtaining the
“ most necessary or desirable private bills, are grievously
“ and needlessly heavy; while the great mass of these, so-
“ called, private bills, (excluding those which are in their
“ nature personal, such as divorce or estate bills); materially
“ affect public interests, and are, although local, essentially
“ public bills. That with respect to these local bills, the
“ chief imperfection of the present system of legislation,
“ arises from the fact, that no provision is made for furnish-
“ ing the committees which sit upon them with complete
“ and trustworthy information, either with regard to the
“ local evils requiring remedies, or with regard to the bear-
“ ing, which the provisions proposed in them may have
“ upon the general law of the country.”

In the same report it is found: “ Your committee would
“ further remark, that it appears by a reference to the
“ Index of the Statutes, that, in the period which elapsed
“ from the Union with Ireland, to the termination of the
“ last session of Parliament, nearly 9200 local and personal
“ bills passed into law, and only 5300 public statutes: but,
“ to the pressure of private business during the two last
“ sessions, they prefer appealing to the experience of mem-
“ bers of the House, rather than to the statement of
“ witnesses, or the statistics of Parliamentary returns.”

The same committee of the Commons made several
valuable recommendations. As to

I.--PUBLIC GENERAL ACTS.

They “ thought it desirable in cases in which only
“ ordinary powers are sought, that means should be afforded
“ to the parties of carrying their projects into execution,
“ under the authority and supervision of one of the public
“ boards or departments, without the necessity of applying
“ to Parliament.

“ That, for this purpose, public general acts should be
“ passed on the several subjects of sewage and waterworks;
“ paving, lighting, police and watching; markets; and
“ every other class of private bills, excluding those which

“ are in their nature personal, on a principle similar to that
 “ which has been already carried into effect, by the 3 & 4
 “ Wm. 4, c. 90, for lighting in England; by the 9 Geo. 4,
 “ c. 82, for lighting, &c., in Ireland; and by 3 & 4 Wm. 4,
 “ c. 46, for police in Scotland, &c.”

II.—PRIVATE BILLS.

It is further reported: “ That, in the opinion of this
 “ committee, it would be desirable, that similar proceedings
 “ should be adopted in the case of all private bills relating
 “ to the abovementioned classes of subjects; and by like
 “ requirements, that all applications for such bills, should,
 “ previously to the session of Parliament be referred to a
 “ selected board or department; to whom a memorial for
 “ authority to put in force the powers of the act must be
 “ presented, &c.”

III.—TAXATION OF COSTS.

It is a portion of the same report that: “ As there is no
 “ scale (*a*) established by Parliament for the charges of
 “ solicitors and agents for promoting or opposing private
 “ bills: which charges are very uncertain, and often very
 “ extravagant; it is desirable for the protection of the
 “ public, that a proper taxing officer, such as is attached to
 “ Courts of Justice, should be appointed, under the autho-
 “ rity of the Speaker; and a scale of taxation be authorized
 “ and published by him, for the guidance of all parties pro-
 “ moting or opposing local and private bills.

“ That the taxing officer shall present to the House, at
 “ the commencement of each session, an account of the
 “ total amount of the expenses for promoting or opposing
 “ of each bill taxed and sanctioned by him, during the
 “ preceding session; distinguishing the amount paid as
 “ fees on each bill to each of the Houses of Parliament; the
 “ amount (of allowance) for witnesses and other expenses;
 “ and for professional services.”

Some trifling inaccuracies in the details of the report of
 this committee, have been before corrected; and it has been
 suggested, with deference, that the Parliament should

(*a*) See *ante*, not strictly true.

have taxing Masters and Examiners jointly appointed to act for both Houses.

The increased number of private bills, and their nature, attest the progress of public improvements in this country. They also demonstrate the variety, as well as the magnitude of the interests involved in these proceedings. The average annual expense incurred in passing these bills through Parliament, including the House fees, and the charge of Parliamentary agent, printer, and solicitor, was estimated at £300,000 per annum (*a*), in 1830, the date of the first edition of this Treatise, before the era of railways.

How great, how rapid, how imposing, has been the progressive advancement since!

The Eastern Counties Railway, which is fifty-one miles in length, cost £45,190 in Parliamentary expenses. The Parliamentary expenses of the London and Birmingham Railway have been stated at £650 per mile; of the Great Western at £1000 per mile. One unsuccessful line, which never got beyond the Standing Orders Committee, cost £82,000 (*b*). Private acts are said to have cost the Borough of Liverpool in ten years £100,000 (*c*). The town of Hull is said to have expended £50,000 within the last half century in contesting dock bills (*d*).

The proceedings upon such measures; and particularly if the work is to be carried on by tolls or duties to be levied upon the subject; are cautious and deliberate. The orders of the House are purposely framed to secure them the fullest discussion.

Upon this personal and local, or municipal, branch of our legislative economy, an enlightened foreigner makes the following remarks: “ *Aussi voyons-nous, que le nombre des actes législatifs a été croissant rapidement depuis quarante ans; de 1781 à 1791 il était, en moyenne, de 171 par Session; de 1812 à 1822 il s’est élevé à 342; c’est juste le double, et dès lors, il est encore allé croissant.* ”

(*a*) Lords’ Report, p. 4.

(*c*) Evidence before the com-

(*b*) See Second Report on
Railway Act Enactments, and Law
Review, No. 9.

mittee.
(*d*) Id.

“ Dans ce nombre, il est vrai, sont comprises, toutes les
 “ mesures d'intérêt local ou individuel, designées sous le nom
 “ de private bills ; telles que des routes à tracer, des canaux à
 “ ouvrir, des marais à dessécher, des biens communaux à
 “ partager et à enclore, &c. J'ai souvent entendu dire sur le
 “ continent, que des affaires de ce genre étaient plus utilement
 “ placées entre les mains de l'administration, qu'entre celles
 “ d'une assemblée délibérante, et je me suis quelquefois laissé
 “ aller un peu légèrement à le croire ; mais la reflexion m'a
 “ ramené à l'opinion contraire, que sera partagée sans peine par
 “ tous ceux qui ont eu malheur de parcourir l'interminable
 “ filière des bureaux ministériels et du conseil d'état ; soit pour
 “ une concession de mines, soit pour un cours d'eau, soit pour
 “ une entreprise quelconque d'agriculture, de commerce, ou
 “ d'industrie.

“ Lorsqu'une question d'intérêt partiel est soumise au
 “ Parlement, elle y arrive déjà élaborée par la discussion sur
 “ les lieux, soit entre les juges de paix aux Quarter Sessions,
 “ soit entre les divers intéressés réunis en assemblée pour cet
 “ objet spécial. Les comités de la chambre des communes,
 “ auxquels la question est renvoyée, ne manquent jamais de
 “ renfermer, un ou plusieurs membres qui sont au fait de
 “ toutes les circonstances locales. S'élève-t-il quelque difficulté,
 “ les comités ont tout pouvoir pour faire accourir à l'instant
 “ des extrémités de l'Angleterre des témoins et des experts, dont
 “ l'interrogatoire rendu public par l'impression, ne laisse pas
 “ l'ombre d'un doute sur les divers points qu'il importe
 “ d'élucider.

“ Une telle marche, est à la fois la plus rapide, et celle qui
 “ offre le plus de garanties contre tous les genres d'abus.
 “ Car, si un grand nombre de bills sont adoptées avec une
 “ promptitude surprenante pour ceux qui ne connaissent du
 “ Parlement que les discussions publiques, et n'ont pas étudié
 “ le travail intérieur des comités, c'est que les chambres sont
 “ certaines que ces bills avant de leur être soumis, en dernier
 “ ressort, ont été l'objet d'un mûr examen, et que, avare de leur
 “ temps, elles ne veulent pas le perdre en vaines formalités.

“ Mais, si quelque droit se trouvait lésé, si on soupçonnait
 “ quelque erreur ou quelque connivance coupable, les mêmes

“bills deviendraient l'objet d'un débat, aussi long et aussi animé, que les plus graves intérêts de l'Etat” (a).

A principal source of expense in proceedings upon private bills, according to the Lords' committee, is the imperfect form in which the original bill is often prepared, before it is sent up to be presented to either House of Parliament. If the bill reaches the Parliamentary agent (as often happens), at the very latest moment before the time expires for receiving it, the obvious consequence is, that all imperfections which belong to it, can only be corrected in its subsequent progress; occasioning repeated attendances upon committees, amendments, new clauses, and recommitments, which lead the party into expenses necessarily indefinite, and probably very considerable.

To obviate this inconvenience as much as possible, it appeared to the Lords' committee very desirable that certain private acts of different classes, and of the most correct form, should be pointed out as precedents to be employed by all persons employed to prepare private bills, with such variations or additions as special circumstances may happen to require. The following is the list given:

PRIVATE BILLS—APPROVED PRECEDENTS.

Inclosure, with Commu-	}	West Ardsley	-	7 Geo. 4. cap. 14.
tation of Tithes				
Drainage	-	Metheringham	-	7 Geo. 4, cap. 34.
Road	-	Temple Normanton	-	7 & 8 Geo. 4, cap. 4.
Canal	-	Peake Forest	-	7 Geo. 4, cap. 30.
Navigation	-	Brue	-	8 Geo. 4.
Railway	-	{ Heckbridge	-	7 Geo. 4, cap. 46.
		{ Liverpool	-	7 Geo. 4, cap. 49.
Tunnel	-	Thames	-	5 Geo. 4, cap. 156.
Bridge	-	Verniew	-	7 Geo. 4, cap. 62.
Improvement	-	Grosvenor Place	-	7 Geo. 4. cap. 58.
Waterworks	-	Nottingham	-	7 Geo. 4, cap. 111.
Gas	-	Macclesfield	-	7 Geo. 4, cap. 8.
Church	-	Rippon	-	7 Geo. 4, cap. 50.
Chapel	-	Brighton	-	7 Geo. 4, cap. 3.
Turnpike-road in Scotland	-	Redrow	-	8 Geo. 4.
Police	-	Gorbals	-	4 Geo. 4, cap. 71.

(a) *Letters sur l'Angleterre, par M. de Staël Holstein.*

Having now completed the first branch of the inquiry, *in legem datione*; having traced the progress of bills of every kind, from their first introduction in Parliament by petition or motion, through their various stages in both Houses and in committees, down to the period when, receiving the royal assent, they become full and complete acts of Parliament, it will for the future be necessary to consider them in their perfect state. This will open a wide field of investigation into their various forms, parts, qualities, authority, relation; the rules as to their admission and construction, with judicial or authoritative expositions of the meaning of particular words or passages to be found in acts of Parliament. When the rules for the interpretation of statutes have been brought together, examined, and illustrated, an attempt will be made to ascertain the proper boundaries of legislation, and of judicial interpretation, and the instances of the exercise of this branch of judicature in our Courts will be historically traced. But first in methodical order, the following chapter will proceed to the enumeration and division of the several kinds of statutes, distributing them under the different heads to which they most properly belong.

END OF PART THE FIRST.

Dwarris, Fortunatus

A general treatise on statutes: their rules of constructions, and the proper boundaries of legislation and of judicial interpretation By Fortunatus Dwarris. Assisted by W. H. Amyot
Bd.: 1

London 1848

J.rel. 135-1

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